

COMPETITION LAW UPDATE

MERGER CLEARANCE OF WACKER CHEMIE AG

The Law

Section 54 of the Competition Act (Cap. 50B) ("**Competition Act**") prohibits any mergers or anticipated mergers that substantially, or may be expected to substantially, lessen competition within any market in Singapore.

Merger Clearance from the Competition Commission of Singapore ("CCS")

On 2 July 2008, the CCS announced that the acquisition of full control by Wacker Chemie AG ("**Wacker**") of two companies that were jointly controlled by Wacker and Air Products and Chemicals, Inc. ("**APCI**"), namely, Wacker Polymer Systems GmbH & Co. KG ("**WPS**") and Air Products Polymers Holdings, L.P. (n.k.a. Wacker Polymer Holdings, L.P.) ("**WP/ex-APP**") would not infringe the Section 54 prohibition against mergers that substantially lessen competition within any Singapore market.

Wacker is a global chemical company operating in the following business areas: (a) polysilicon products; (b) silicones; (c) fine chemicals; and (d) ultra-pure silicon wafers for semiconductors. WPP/ex-APP is primarily active in the production of dispersions which are based on vinyl acetate monomer ("**VAM**"). WPS is primarily active in the production of powders which are based on VAM.

The parties engaged Lim Chong Kin, who co-heads the Competition Law Practice Group at Drew & Napier LLC, to advise on the merger clearance procedures in Singapore, and to assist the merger parties in preparing the Form M1 for notification of the merger to the CCS. On 23 May 2008, the parties voluntarily notified their merger to the CCS for a formal decision as to whether the merger breaches Section 54 of the Competition Act.

In its decision, CCS found that there are no competition concerns arising out of the transaction because:

- (a) the transaction merely involved a change from Wacker jointly controlling WPS and WP/exAPP with APCI to Wacker solely controlling the two joint ventures; and
- (b) given that Wacker has a controlling interest in WPS and WP/ex-APP, the market shares of the two joint ventures was already previously attributable to Wacker. Effectively, therefore, Wacker's market share does not increase.

The CCS decided that the transaction will not lead to any change in the competitive structure of the relevant markets. There is no overlap in the markets of the three parties, ie, Wacker does not produce any dispersions or powders and WPS and WP/ex-APP do not compete with each other.

In its decision, the CCS also noted that, during the course of its investigation, none of the third parties (including customers) expressed concerns about the notified merger having a negative impact on their businesses. The decision was published on 15 July 2008 and is available at <http://www.ccs.gov.sg/PublicRegister/Mergers+Decision.htm>.

Comment

One key issue relating to this filing was whether or not the transaction fell within the purview of the Competition Act. In this connection, the CCS considered whether or not the transaction could be considered a “merger” under Section 54(2)(b) of the Competition Act. Section 54(2)(b) states that a merger occurs if one or more undertakings acquire direct or indirect control of the whole or part of one or more other undertakings.

In the present case, prior to completion of the transaction, Wacker and APCI jointly controlled the two target joint venture companies. In its grounds of decision, the CCS took the view that, even though the shareholdings of Wacker and APCI in the joint ventures were not equal, each shareholder in each joint venture had the right to object to the appointment of senior management or the adoption of budgets, business plans or major investments. The CCS therefore found that Wacker and APCI's veto rights thus gave them *joint control* over WPS and WP/ex-APP, prior to the completion of the transaction. Following the completion of the transaction, the CCS found that there was a *change from joint control to sole control* by Wacker over WPS and WP/ex-APP. Such a transaction would therefore constitute a merger under Section 54(2)(b) of the Competition Act.

If you have any queries about this update or wish to discuss how it may potentially affect you or your business, please feel free to contact:

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