



27 February, 2012

Clerk to Bills Committee on Competition Bill
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

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Email: bc_12_09@legco.gov.hk

Dear Sir/Madam.

Re: IFPI Hong Kong Group further submission of Competition Bill

The following is the further submission of International Federation of Phonographic Industry (Hong Kong group) on Competition Bill before the LegCo Bills Committee on 28 February 2012.

A. Our Position on the Bill

First and foremost, we must register our **strenuous opposition to the passing of the Competition Bills in its present form**. As pointed out in our submission to the Bills Committee dated 13 February 2012. The Bill does not serve the purposes and goals it was supposed to bring to our free market economy nor increases consumer welfare as it is not to protect competition or market structure but economic efficiency that will be inevitably the ultimate test for deciding if any alleged undertaking or activity amounts to anti-competition.

Absent empirical data on the role played by SMEs in our free market economy (given that Hong Kong has been ranked as the world's freest market for 18 consecutive years by Heritage Foundation, partly due to the highly competitive market structure because most of our economy is run by SMEs), the Bill target SMEs that comprises more than 80% of our market structure unfairly and oppressively even though we all know too well that they are running their business in a very competitive environment and they can hardly meet their daily costs and expenses these days let alone running a profitable one. Those who fail will be forced out of the business. For reasons as stated in our earlier submission dated 13 February 2012, the Bill in its present form only makes life miserable for SMEs.

B. Collecting Societies and Natural Monopoly

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Without prejudice to the generality of the foregoing paragraph A and our views as expressed in our submission dated 13 February, we wish to point out that

1. Given Hong Kong's small and concentrated economy, it is not unusual for a few competitors dominating a particular market segment but they compete efficiently in that market. The policy makers should and cannot afford to forget or omit or neglect the importance and appreciation of **the concept of natural monopoly** in a competitive market, a single entity can and, very often than not, do **maximize the efficiency of production and distribution thereby promoting consumer welfare.**¹
2. As pointed out in paragraphs 12-14 of our submission dated 13 February 2012, economies of scale supports the notion that a collective management of copyrights is a natural monopoly *and primae faice*, a natural monopoly is not compatible with competition (rather it is based on economic efficiency test). Clearly, a natural monopoly should not be regulated in order to foster competition because collecting societies is highly efficient in negotiating, monitoring, and enforcing copyright collectively for copyright owners. The end users will be benefitted from such one-stop shop approach as it substantially reduces the transaction costs of obtaining copyright clearance as opposed to obtaining the rights from individual owners.
3. The situation is that different collecting societies will fragment the repertoire and for most users fragmentation has raised the transaction costs associated with copyright clearance and users who choose a licence from only one of the performing rights collecting society will face an increased legal uncertainty as to which recording works are covered by the licence.
4. Furthermore, in order to be competitive, a collecting society must reduce administrative costs and price at marginal cost. It has to cut down on activities relating to the enforcement of rights and the monitoring of the market; this hurts both the copyright creators as well as the consumers as there is no incentive to create because of rampant piracy (unless of course the government is willing to foot all the bills of copyright enforcement).

C. Functional Approach

Anybody who suggests that functional test be universally applied to those exempted bodies has his head in the clouds as to what is going on in the market place without due regard for economic efficiency but rather focusing on competition. After all, the aim of competition in our market economy is to make business run efficiently. For illustration, Trade Development Council is the international marketing arm for Hong Kong-based

¹The Legislative Council Brief on Competition Bill paragraph (c) 6 on page 2 of Annex B: "The economic benefits would likely be higher output, lower prices and more choices of products."



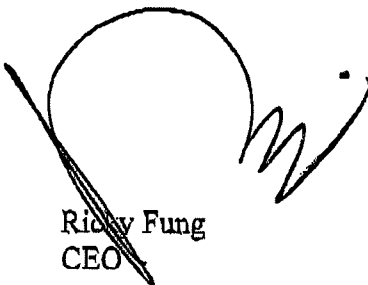
manufacturers, traders and service providers so that they may be able to well place or position in the competitive global market, it (and the one-stop shop approach) reduces the transaction costs for local Hong Kong based industries for getting market information, market access and market penetration in the world. Its integral approach and global connection is second to none it serves as a bridge between Hong Kong industries and global market efficiently and effectively. In a practical term, it is dealing with global market as opposed to a tiny Hong Kong market. It competes with Macau, cities next to Hong Kong and other leading jurisdictions for convention trade shows and exhibitions. No wonder why it is able to attract so much support from Hong Kong based industries for including it into the exemption list.

D. Conclusion

We feel that we are arguing the toss (as each side simply cannot accept the view of other) absent any empirical findings and research data on our own SMEs' economy. However, the legislators who vote for this Bill will go down in our history as the one who has sold out the soul and past effort of our SMEs, totally ignoring their hard work and contribution, and sacrifice in building up Hong Kong as the freest market economy in the world. The ecosystem of doing business as a SME will ever be changed and larger corporations and lawyers (which they do not understand how the market actually work) will be the ultimate beneficiaries under the proposed Competition Bill.

We thank the Bills Committee for this opportunity for making our submission.
I may be contacted at 2861 4303 and rickceo@ifpink.org for clarification to the above.

Yours truly,
For and on behalf of
International Federation of the Phonographic Industry
(Hong Kong Group) Limited



Ricky Fung
CEO

c.c. IFPI Hong Kong Group Committee

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