



Mr. Andrew Leung Kwan-yuen
Chairman of Bills Committee
Legislative Council
8 Jackson Road
Central
Hong Kong

Your reference
Our reference
Date

LC/JL
4 May 2011

Re : Submissions on Competition Bill

Dear Sir,

Zurich Insurance Group
(Hong Kong)

By way of introduction, we are an insurance company authorized in operating general business. We write to submit our views concerning the Competition Bill for your consideration.

Zurich Life Insurance
Company Limited
(a company incorporated in
Switzerland with limited liability)

Briefly, our main concern is the lack of precise definitions. Whilst we understand the need of a broad coverage, the end result is that we, as a business operator, are uncertain of the legal requirements and how we may comply with the law. We attach some of our views in more details from an insurer's perspective. We would like to make it clear that the attached views are non-exhaustive. However, your clarifications to our concerns would hopefully, minimize ambiguities and reduce further queries.

Zurich Insurance Company Limited
(a company incorporated in
Switzerland)

Zurich Assurance Limited
(a company incorporated in England
and Wales with limited liability)

We look forward to receiving your reply.

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18 Westlands Road
Island East, Hong Kong

Yours faithfully
For and on behalf of
Zurich Insurance Company Limited

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Allan Yu
Director, General Business

Encl.

**Comments on Competition Bill
by Zurich Insurance Company Ltd (“Zurich”)**

1. Unclear definitions

- What kind of conduct would constitute “prevent, restrict or distort competition” under First Conduct Rule?
 - In the context of insurance business, would the engaging of exclusive agents be considered a breach of the First Conduct Rule?
 - In the context of co-insurance, it is a prudent business approach to formulate a pool of stable and strong insurers as co-insurers or reinsurers, would such a pool be considered as to ‘prevent, restrict or distort competition’? Will the Commission issue a block exemption order pursuant to Section 15, similar to the approach adopted by the European Commission?

- What is meant by “concerted practice” under First Conduct Rule?
 - Would transactions made between related companies within the Zurich Group that would benefit the Zurich Group itself be interpreted as “concerted practice”? For instance, the Hong Kong office may reinsure certain risks with another Zurich office outside Hong Kong or vice versa, would that arrangement be considered “concerted practice”?
 - Would any statistics studies jointly carried out by a number of insurers be considered “concerted practice”? Alternatively, will there be a block exemption order similar to the one issued by the European Commission?

- What is meant by “substantial degree of market power in a market” under Second Conduct Rule?
 - Is “substantial degree” determined by a percentage? Otherwise, what are the factors for consideration?
 - For insurance companies, is “market power” determined by gross (or net) premiums made by any one insurer in the previous financial year?
 - Although Zurich is a company incorporated in Switzerland, it

nonetheless carries on insurance business in Hong Kong as a branch office. Will "market power" be determined by the gross (or net) premiums made in Switzerland or Hong Kong?

- The Hong Kong branch of Zurich carries on the business of general insurance with various classes of business including accident & health, motor vehicle, etc. If a particular conduct involves only one class of business (e.g. motor vehicle), would the "market share" be governed by the gross (or net) premiums made by Zurich in that class of business or all types of general insurance business?
- What constitutes "abuse" under the Second Conduct Rule?
 - Insurance companies may engage exclusive agents for promoting and selling insurance products. Would such exclusive engagement be an "abuse" of market power?

2. Need of clear guidelines

- Section 35 imposes an obligation on the Commission to issue guidelines. Given each business industry has its own particular work practice and customs, it is preferable for the Commission to issue guidelines addressing different types of business.
- Section 40 also requires the Commission to issue guidelines on investigation protocol. Given the wide powers authorized by the Bill, the investigation protocol is thus important and is yet to be reviewed.

3. Penalties appear excessive

- Section 90(1) exposes "any person" to a pecuniary penalty should the Tribunal has reasonable cause to believe that this person has been involved in contravention of a competition rule. Would all employees having participated in a contravening conduct be penalized? Does the Tribunal distinguish frontline operational staff from managerial staff?
- Section 91(3) restricts the maximum penalty to 10% of an undertaking's turnover obtained in Hong Kong or outside Hong Kong. What are the factors for the Tribunal in determining an "appropriate" penalty?
 - If the Hong Kong branch of Zurich infringes a Conduct Rule whereby

the relevant conduct occurs and affects Hong Kong only, then the potential penalty would be out-of-proportion and too severe if the maximum penalty is subject to the entire turnover of Zurich on a worldwide basis.

- In determining an appropriate penalty, would the Tribunal take into account each person's culpability in contributing to the infringement? e.g. the Tribunal should distinguish negligence from reckless or fraudulent conduct.
 - As the Bill allows follow-on or stand-alone actions by third parties, in determining the appropriate penalty, will the Tribunal take into account of any such potential damages which an individual may need to pay?
- Section 167(1) further prohibits the payment of penalty by any person other than the person penalized under Section 90(1).
 - For any operational staff with no participation in the management decision making, this penalty is excessive and unfair.
 - Would the making of an insurance payment (say from a Directors and Officers policy) be considered as an indemnity that falls within the scope of Section 167(1)?

4. Establishment of the Tribunal

- The Tribunal will consist of judges of the Court of First Instance (Section 134). Whilst the Tribunal may adopt informal rules and procedures, there is a need of a transparent protocol for ensuring fairness to each person appearing before the Tribunal.

5. Private actions

- Section 106 prohibits the independent bringing of legal proceedings in court and such restriction will result in confusion and uncertainties.
 - The limitation periods laid down in the Bill are not in line with the statutory limitation periods in the Limitation Ordinance (Cap.347), e.g. an undertaking may be in breach of the Conduct Rules due to negligence and the limitation period should therefore be six years.
- Actions that are based on other causes of actions may commence in the Court of First Instance. Litigants could easily avoid the Tribunal (which is



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the intended judicial authority) by raising another cause of action albeit such cause of action may lack merits.

- The follow-on action and stand-alone action appear to allow an employer to sue its employee who has infringed the Conduct Rules. Is this the intention?
