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28 July 2011

Hon Andrew Leung Kwan-yuen, GBS, JP
 Chairman
 Bills Committee on Competition Bill
 Legislative Council

(By Email: mjylee@legco.gov.hk)

Dear Mr. Leung,

HAFFA Views on the three Guidelines relating to the proposed conduct rules in the Competition Bill

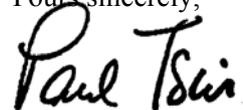
Reference is made to your letter of the three guidelines relating to the proposed conduct rules in the Competition Bill received on 30 June 2011. Having duly deliberated the matter at our Executive Committee, on behalf of HAFFA, I am writing to submit our considered views on the said guidelines for your consideration.

1. HAFFA holds reservation as to the legislation procedures that said, details of ordinance are to be formulated after its enactment, currently adopted by the HKSAR Government. We are of grave concern that the stakeholders can only determine whether they are in supportive to the law where details are available. Some areas are considered essential but not included in the guidelines for consultation. They include but not limited to:
 - (a.) **Substantial degree of market power**
 - (i) How to define a substantial degree of market power?
 - (ii) What is the market share threshold for defining a substantial degree of market power?
 - (iii) It is vital to put in place a mechanism to review the threshold regularly.
 - (b.) **Examples of Agreement that may infringe the first conduct rule**
 - (i) Under section 4 of the "Guidelines on the First Conduct Rule", clear and particular details of all twelve (12) examples of conducts (under section 4.2) should be incorporated in the Guidelines to avoid ambiguity and mis-understanding.
 - (ii) It should be explicitly indicated in the Guideline that except the four "hardcore" conducts, the Competition Commission should not bring a prosecution against the industry for the remaining conducts unless there are substantial evidences and clear examples of "substantial evidence" should also be included in the Guideline.
2. Given there is significant impact on Hong Kong companies after enactment of Competition Ordinance, we request for a reasonable transitional period of at least 3 years with a view to facilitating the industry adapting to the statutory requirement. During this transitional period, the industry can better understand the new law, put in place compliance and training programmes and make adjustments to their business practice as necessary.

Should you require further information / clarifications, please feel free to contact the undersigned or Ms. Alice Lui at 2796 3121.

Thank you for your attention.

Yours sincerely,



Ir. Dr. Paul Tsui
 Chairman
 HAFFA

Cc: HAFFA Legal Matters Sub-committee, Policy Sub-committee and Executive Committee