

香港特別行政區政府  
商務及經濟發展局  
工商及旅遊科



COMMERCE, INDUSTRY AND TOURISM BRANCH  
COMMERCE AND ECONOMIC  
DEVELOPMENT BUREAU  
GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION

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LEVEL 29, ONE PACIFIC PLACE  
88 QUEENSWAY  
HONG KONG

25 July 2011

Mr Alex Fong  
Chief Executive Officer  
Hong Kong General Chamber of Commerce  
22/F United Centre  
95 Queensway, Hong Kong

Dear Mr Fong,

### **Competition Bill**

Thank you for your letter of 4 July 2011 to the Hon Andrew Leung, Chairman of the LegCo Bills Committee on Competition Bill (Bills Committee), offering comments on our recent Administration's response to issues raised by the Bills Committee (LegCo Paper CB(1)2420/10-11(02) refers). We note that the majority of views of the Hong Kong General Chamber of Commerce (HKGCC) focus on the formulation and the application of the conduct rules in the Competition Bill (the Bill), as well as the reference value of Canada's dual-track enforcement model of the competition law.

#### ***General prohibitions and the application***

As we explained in detail in our previous submissions to the Bills Committee, we saw merits in adopting general prohibitions in the Bill in order to cater for the dynamic changes in market circumstances and business practices. The current formulation of the first and second conduct rules in the Bill makes reference to those adopted in overseas jurisdictions including the EU, the US, and Singapore, covering a large number of economies and Hong Kong's major trading partners. In terms of their actual application in the economic context, the proposed conduct rules are similar to those in overseas competition jurisdictions as well as that of the Telecommunications Ordinance or the Broadcasting Ordinance. As with all other jurisdictions, we envisage the future Competition Commission (the Commission) and the Competition Tribunal (the Tribunal) would look into the facts of each case and apply the

relevant guidelines, case law and prevailing competition and economic doctrines whenever appropriate to suit the local market circumstances.

The Bill does not propose automatic breaches of conduct rules. The crux of the general prohibitions in the first and the second conduct rules is that the Commission must show that an agreement or any conduct has the object, or the effect, of preventing, restricting or distorting competition in Hong Kong. That bid rigging is commonly regarded as an agreement restricting competition does not alleviate the onus of the Commission to establish, as a matter of fact, that a particular agreement to rig bids has contravened the conduct rules.

### *The Canadian approach*

As explained in our submission to the Bills Committee in April 2011 (LegCo Paper CB(1)1868/10-11(02) refers), the Canadian competition law has its own history and features, particularly the *per se* and criminal prohibitions to tackle hardcore anti-competitive conduct, vis-à-vis other horizontal agreements that could be dealt with under the civil regime. We note HKGCC's views on the Canadian dual track model to differentiate treatment of hardcore and non-hardcore conduct. On the other hand, we also note that the Canadian dual track model is a relatively new approach introduced in 2009 and no case has been brought by the Canadian Commission Bureau under the civil regime so far. We will continue to listen to views as to whether certain elements of the Canadian model are appropriate for Hong Kong.

We thank HKGCC for its valuable contribution to the discussion of the Bills Committee. We are looking at various suggestions put forward by the stakeholders on different aspects of the Bill, and will present our proposals to address the key concerns in the fourth quarter of 2011.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line and a small dash.

( Raymond Wu )

for Secretary for Commerce and Economic Development

c.c.

The Hon Andrew Leung, Chairman of the Bills Committee on Competition Bill  
Ms Debbie Yau, Clerk to Bills Committee on Competition Bill