



CB(1)516/10-11(08)

19 November 2010

Chairman and Members of Bills Committee on Competition Bill
C/o Clerk to Bills Committee on Competition Bill
(Attn: Ms Debbie SIU, e-mail: hysiu@legco.gov.hk)

Dear Sirs,

Submission to Bills Committee on Competition Bill

Thank you for inviting the Hong Kong Democratic Foundation (HKDF) to attend the meeting on Monday 29 November 2010, at 4.30 pm in the Chamber of the Legislative Council Building. The HKDF started the discussion on the merits of implementing a general competition policy in Hong Kong in March 1994ⁱ. Further discussions on the subject were made by the HKDF in:

- ✓ 1997 in a letter to Prof Edward Chen, Chairman of the Consumer Councilⁱⁱ;
- ✓ 2003 as a 27-page Joint Position Paper by The Frontier and HKDFⁱⁱⁱ;
- ✓ 2004 in a letter to Pascal Lamy, EU Trade Commissioner^{iv}.
- ✓ The HKDF has also been the sponsor of the annual Asian Competition Forum hosted by the School of Accounting and Finance, The Hong Kong Polytechnic University.

Thanks to efforts of academics, legislators and the Administration, we are pleased to see that Hong Kong has now come to the stage of final legislative proposals to implement a Competition Bill, a Competition Commission and a Competition Tribunal. We take the view that the current legislative proposals should be implemented as soon as possible, even though some proposals by the Administration are less than perfect and reasonable.

However, we have concerns about Point 4 of the Administration's briefing to Legco on 28 June 2010^v -- CB (1)2301/09-10(03):

"4. The Bill will not apply to the Government and statutory bodies except for those statutory bodies or their activities specified by way of a regulation to be made by the CE-in-Council. The regulation making power will be provided for in the

Bill. There are some 500 statutory bodies with very diverse functions set up in Hong Kong. We are examining these statutory bodies in conjunction with Bureaux and Departments to determine which, if any of these bodies should be made subject to the application of the Bill. Given the large number involved and close examination is required, we anticipate that more time will be needed to complete the work. However, this should not affect the drafting of the Bill.”

Point 4 above refers to:

- *Section 3 (1) of the Bill: The following provisions do not apply to a statutory body --*
- *Section 5, (1) (a) of the Bill – The Chief Executive in Council may, by regulation, apply the provisions refer in Section 3 (1) to – i) any statutory body; or ii) an statutory body, to the extent that it is engaged in an activity specified in the regulation; and”*

The HKDF takes the view that:

1. The Administration’s proposal to ask Legco to give it blanket exemption power is less than ideal as this could be compared to the earlier act of granting exemption to the Housing Authority from the Hong Kong Building Codes. The result of the latter exemption was that many public housing flats later had severe sewage leakage problems inside the flats. It is also not reasonable for the Administration to ask for such blanket power from Legco on grounds that there are too many statutory bodies to review.
2. If Legco accepts this position, the Bill will be probably passed quickly. But Legco would be giving up its constitutional responsibility as elected representatives of the community and would be leaving it entirely to the Administration to decide which one of the 500 statutory bodies are subject to Competition Law. And Hong Kong would find itself with “soft” infrastructure problems in many public institutions; the fault will not be physical and cannot be smelled or touched like sewage, but it will not be less problematic.
3. There would be no incentive for statutory bodies, particularly those that engage in commercial activities, to comply in future since they would already have been given “blanket coverage” by the Administration. The relevant Policy Bureaus would also lose the incentive to review the anti-competition activities of the statutory bodies under their charge.

HKDF however, partially agrees with the Administration that some statutory bodies that deliver significant social or economic value to Hong Kong should be considered for exemption, particularly if there is wide community support for such an exemption.

Therefore, a more desirable position Legco could consider is as follows:

1. The Administration should only be given power by Legco to grant exemption to each of the 500 Statutory Bodies on a case-by-case basis (or in blocs of related bodies). Exemption is subject to Legco approval through a simple majority vote.
2. To give time to HKSAR Government to review the activities and conduct of each of the 500 Statutory Bodies and to propose to Legco on the cases that deserve exemption, Legco could agree to a give *temporary exemption* to all Statutory Bodies for a period of 3 to 5 years.
3. During the 3 to 5 years period, the Administration should review the activities and bring forward the cases proposed for exemption to Legco for approval. For the Statutory Bodies that are not expected to get community support (or do not pass the simple majority test in Legco), the Administration will need to adjust the business activities, so that the Statutory Bodies in question would comply with the Competition Bill.

Thank you very much for your attention. We hope the above views offered by the HKDF have been useful to the Bills Committee on Competition Bill.

Sincerely yours,

The Secretariat
For and on behalf of the Policy Committee of
Hong Kong Democratic Foundation

ⁱ Short policy paper published by HKDF: <http://www.hkdf.org/pr.asp?func=show&pr=49>

ⁱⁱ Letter to Edward Chen: <http://www.hkdf.org/pr.asp?func=show&pr=60>

ⁱⁱⁱ Joint Position Paper by The Frontier and HKDF:
<http://www.hkdf.org/download/comppol8.pdf>

^{iv} Letter to Pascal Lamy and reply from the EU Trade Commissioner:

<http://www.hkdf.org/pr.asp?func=show&pr=137>

<http://www.hkdf.org/newsarticles.asp?show=newsarticles&newsarticle=147>

^v CEDB's Briefing to Legislative Council dated 28 June 2010 --

CB(1)2301/09-10(03) <http://www.legco.gov.hk/yr09-10/english/panels/edev/papers/edev0628cb1-2301-3-e.pdf>