

**Consumer Council's Submission to Legislative Council Bills Committee on Competition Bill 2010 (November 30, 2010)**

- 1 A series of studies conducted by the Consumer Council over the years have revealed that for industries such as auto-fuel, supermarkets, broadcasting and domestic fuel, imperfect competition in the market resulted in raised prices to consumers and cost to businesses. In the Consumer Council's 1996 Report, "Competition Policy: The Key to Hong Kong's Future Economic Success", it is stated that the Consumer Council believed a comprehensive competition policy and a body of law can help remove private sector barriers to market entry and ensure free competition which is not distorted by price fixing, market sharing or other anti-competitive practices so that the operating costs of businesses can be kept at a competitive level in Hong Kong.
- 2 Over 100 economies have in place competition law with provisions against price-fixing and abuse of market dominance. The Consumer Council advocates a competition policy which prohibits anti-competitive behavior and facilitates competition and enhances industry wide competitiveness. As seen with sectors such as telecommunications and banking, competition can lead to lower prices, product innovation, more choices and improved services, definitely benefiting consumers.
- 3 The case concerning metal gate suppliers of Housing Authority and another one involving tendering Tai Po market in Hong Kong demonstrate that there are inadequate measures to regulate collusive anticompetitive activities in the market. On the contrary, overseas competition authorities have sued a number of international cartels in the last few years such as the vitamin cartel, heat stabilizer and PVC modifier cartel, the LCD panel cartel and airline cargo cartel. In those cases, it was found that the anti-competitive activities of the cartels involved vastly increased the productive costs of Asian economies including Hong Kong.
- 4 The Consumer Council supports the current general prohibition approach for the Conduct Rule in the Bill. This would cover all types of anti-competitive conduct that might arise in the marketplace. As anti-competitive market practices can rapidly evolve in the market causing harm to consumer welfare, resort to amending the law to regulate those practices may come too late to reverse the damage.
- 5 The major concern of legislation should not be the type of business activities to be regulated. Rather it should be concerned with how to ensure adequate competition safeguards. Competition works within economic markets, and as markets are constantly evolving, there is need for a regulatory framework that is sufficiently flexible to accommodate changes.
- 6 Besides, it is seen in many cases that a contractual restriction or a restrictive practice does not necessarily result in a restriction of competition to the detriment of consumer welfare. The concept of restriction of competition is an economic one, and as a general proposition, economic

analysis is needed to determine whether an agreement or a business practice could have an anti-competitive effect. It involves more than just identification of a prescribed conduct.

- 7 The Consumer Council notes that view from certain quarters that not spelling out what prescribed conduct would constitute anti-competitive conduct could lead o uncertainty. This is an issue to address. A common approach adopted by other jurisdictions which have general prohibitions is to supplement the legislation with guidelines and regular commentaries by the relevant competition authority. The Consumer Council supports such an approach which is also applied to local telecommunications and broadcasting sectors.
- 8 The Consumer Council urges Members to support legislation to safeguard and foster market competition in order to combat anti-competitive practices in the market place.