



香港建造商會
Hong Kong Construction Association

CB(1)633/10-11(02)

2 December 2010



Our Ref.: _____

By fax and post

2978 7569

The Honourable Andrew Leung Kwan-yuen, GBS, JP
Chairman
Bills Committee on Competition Bill
Legislative Council
8 Jackson Road, Hong Kong

Dear Sir,

Competition Bill

As requested, please find below the further submission of the Hong Kong Construction Association ("HKCA") delivered orally in the Bills Committee's meeting yesterday. These are matters in addition to those referred to in the joint written submission of HKCA, the Hong Kong Federation of Electrical and Mechanical Contractors Limited, and the Association of Consultant Quantity Surveyors:

1. Training of local personnel in anti-competition law

Anti competition law is an entirely new area of law. It is highly technical and requires expertise and practical experience to put the law into effect.

The Association proposes that the Government should invest more resources in training up local experts in competition law to ensure that the law, when enacted, will be applied and enforced efficiently and correctly. The Government should not haste into pressing ahead without complementing support.

2. Ambiguities

Another concern of the Association is the drafting of the Bill. There are a lot of grey areas and ambiguities. For example, the Association is concerned about the definition of the word 'turnover' in the Bill.

Whilst Section 91(4) defines 'turnover' as 'the total gross revenues of an undertaking whether obtained in HK or outside HK', it remains unclear as to whether the basis of the calculation of the pecuniary penalty to be imposed by the Tribunal is restricted to turnover obtained locally in Hong Kong or whether global turnover will be caught by the proposed legislation.

Companies which carry out a diversity of businesses in different sectors in the market are also concerned that the pecuniary penalty to be imposed may not be restricted to the business which is the subject of a contravention of the competition rules. It is unclear as to whether the turnover received in other businesses of the same company will be subject to penalty.

These ambiguities could seriously deter international companies from carrying on their businesses in Hong Kong.

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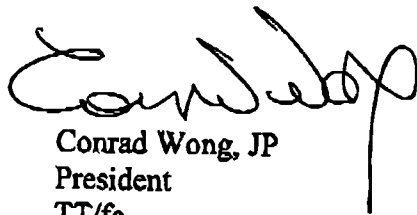
3. Reimbursement of costs of investigation

Section 94 empowers the Tribunal to order a contravening undertaking to reimburse the Government of the costs incurred in the Commission's investigation.

There is no reciprocal arrangement to the effect that if, after the Commission's investigation, an undertaking is found to be not guilty of contravention, it can ask for reimbursement of the costs reasonably incurred in dealing with the investigation.

Experience in the UK and in Europe shows that investigation by any competition authority can lead to massive administrative and legal costs for the party who is being investigated. It is therefore important that there is some costs protection available to undertakings under the legislation.

Yours faithfully,



Conrad Wong, JP
President
TT/fc