

香港特別行政區政府
商務及經濟發展局
工商及旅遊科



香港金鐘道八十八號
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COMMERCE AND ECONOMIC
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16 December 2010

Ms Debbie YAU
Clerk to Bills Committee
Council Business Division 1
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Hong Kong

Dear Debbie,

**Bills Committee on Competition Bill
Meeting on 20 December 2010**

I refer to your letter of 13 December 2010 inviting the Administration to provide supplementary information on the consideration to add an express provision in proposed section 1(a) of Schedule 1 to the Competition Bill (the Bill) about "allowing consumers a fair share of the resulting benefit". Our response is set out in the following paragraphs -

2. The Government's competition policy is to enhance economic efficiency and the free flow of trade through promoting sustainable competition to bring benefits to the entire community, business sector and consumers. As a competition law is meant to

preserve and protect the competition process, enhancing consumer welfare will undoubtedly be one of the outcomes of the Bill.

3. Section 1 of Schedule 1 to the Bill provides for a general exclusion from the first conduct rule in respect of any agreement that enhances or would likely enhance overall economic efficiency, i.e. where the gain from economic efficiency is greater than the anti-competitive harm. We consider that this particular section as currently proposed already suffices to capture the rationale of granting exclusion on economic benefit grounds. Moreover, we envisage that it would be very often difficult to verify how the efficiency gains arising from a specific agreement are shared among different stakeholders (including consumers) over time, not to mention how to determine what constitute a "fair" share. As we encourage undertakings to self-assess their agreements in accordance with the general exclusions provided in Schedule 1 of the Bill, we consider it not appropriate to add the phrase "allowing consumers a fair share of the resulting benefit" into this section which will introduce uncertainties for the business sector, especially SMEs, in their self-assessment under the general exclusion mechanism.

Yours sincerely,



(Wendy Chung)

for Secretary for Commerce and Economic Development

c.c. Commerce and Economic Development Bureau

(Attn: Mr Greg SO, Under Secy for Commerce & Econ Dev

Ms Linda LAI, Dep Secy for Commerce & Econ Dev
(Commerce and Industry) 1)