



BY FAX and by POST

14 April 2011

To: Andrew Brandler  
Chairman  
HKCSI Expert Group on Competition Law  
22/F United Centre  
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Fax No: 2821 9594

cc. The Hon Andrew Leung Kwan-yuen, GBS, JP

Chairman  
Bills Committee on Competition Bill  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong  
Fax No: 2869 6794

Dear Mr Brandler,

As one of the academic signatories to the letter entitled "Response to Objections to the Hong Kong Competition Bill" (**Response to Objections**), I would like to take this opportunity to provide a personal reply to your paper "HKGCC response to the open letter from academics dated 24 February 2011" (**HKGCC's Response**).

To the extent that you suggest the debate ought to be about "what kind of competition law" Hong Kong should have, rather than whether or not Hong Kong should have a competition law, I am in agreement with the HKGCC.



I am forced to disagree strongly, however, with your view that "the Letter does not accurately reflect the real issues being debated." This is an extremely surprising proposition. While the HKGCC is making a positive contribution to current discussions on competition law by offering proposals as to possible alternative forms the law could take, the debate as to *whether* Hong Kong should have a competition law is far from over. The HKGCC would be very much out of touch if it considered otherwise.

Competition law does not have universal support in Hong Kong as yet: some members of the community still harbor objections. As its title indicated, the letter endeavoured to provide a succinct "Response to Objections" which have been heard in the debate so far. The letter stated the authors' objectives in these terms:

Since the Competition Bill was introduced to Hong Kong's Legislative Council in July 2010, a number of objections have been expressed against the Bill or particular features of it. In this open letter, we summarise twelve of the principle objections and comment on them, in the light of international experience.

The letter went on to enumerate twelve particular objections in twelve subheadings and respond to each in turn. That the Response to Objections was responding to specified objections could scarcely have been clearer.

The HKGCC's complaint that the Response to Objections "depicts the policy choice as either to have no competition law at all, or to have a competition law in the form of the Bill as currently drafted" is wholly unwarranted, as is the claim that the Response to Objections "defends, uncritically, the Bill as currently drafted." The HKGCC is mistaken in characterizing the Response to Objections as "[t]his 'all or nothing,' 'take it or leave it' approach...". Not only did the Response to Objections contain no claim that the Bill has achieved perfection in its present form, it stated that the Government and LegCo "...should reconsider how the issue of statutory bodies should be dealt with under the Bill...".

Secondly, the HKGCC's suggestion that the "real issue" is "what kind of competition law" Hong Kong should have appears to overlook that this question has been addressed by consultations conducted in 2006 and 2008. There are matters of detail which may usefully be debated regarding the present Bill, and the HKGCC is making a constructive contribution to that discussion, but it is equally essential for the counter-arguments to be stated in response to the particular objections that have been expressed on the issue of "whether Hong Kong should have a competition law," and I believe the Response to Objections made a relevant contribution on this latter, persisting issue.



Annexed to the HKGCC Response is a table offering comments on particular points made in the Response to Objections. My colleagues and I will look forward to responding to those remarks in the context of ensuing debate on "what kind of competition law" Hong Kong should have.

Yours sincerely,

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