



21 February 2012

The Hon Andrew Leung Kwan-yuen SBS JP
Chairman
Bills Committee
The Legislative Council
2 Tim Mei Avenue,
Tamar

Hong Kong

Dear Mr. Leung

RE: Bills Committee on Competition Bill Meeting on 28 February 2012: Invitation for Submissions

The purpose of this letter is to update the Bills Committee on the Chamber's views on the Competition Bill.

In general, the Chamber supports fair competition and is strongly against anti-competitive business conduct. Further, the Chamber considers that any future competition legislation must acknowledge Hong Kong as a small, city market and be specifically tailored for our unique economy.

The Chamber has long advocated that the introduction of any new legislation should be advanced, only after rigorous, objective Regulatory/Government Impact Assessment (R/GIA) that weighs the potential benefits versus disbenefits to Hong Kong arising from all new legislation.

The Chamber wishes the Administration to address the following eight major concerns, before any further advancement of the Bill;

1. Ensuring all Government and statutory bodies with a commercial function are subject to the proposed law, with zero exemptions;
2. Providing business with a clear definition of anti-competitive behaviour and specifying precisely which forms of conduct will be unlawful;
3. Sharing with the business community R/GIA findings in relation to the proposed law;
4. Publishing terms of reference for the future Competition Commission;
5. Publishing principles for the selection and appointment of suitably-qualified members of the Competition Commission ensure such members have a clear understanding of Hong Kong's geographically small market and the porous nature of the borders when it comes to trade;

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6. Exempting vertical agreements (i.e. between business operators at different levels of the supply chain) from any challenge under the proposed First Conduct Rule;
7. Replacing the imprecise "substantial market power" term in the proposed law's Second Conduct Rule with a 'market dominance' threshold, and supplementing this with a precise definition of the new term that draws on the extensive guidance available from the many jurisdictions utilising such threshold in their competition legislation; and
8. That all major guidelines relating to the proposed law will be the subject of broad public consultation.

Unless the Bill Committee is able to address the above concerns, the British Chamber of Commerce in Hong Kong will not feel able to support the Bill.

Yours sincerely,

Kevin Taylor
Chairman
The British Chamber of Commerce in Hong Kong

Cc: Mr Gregory SO Kam-leung, JP - Secretary for Commerce and Economic Development
Paul Brough – Chairman European Chamber of Commerce in Hong Kong
Nicholas Sallnow- Smith – Vice Chairman
Timothy J. Peirson – Smith – Chairman Business Policy Unit

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