

Hon Andrew LEUNG Kwan-yuen, GBS, JP

Bills Committee on Competition Bill

Legislative Council

Hong Kong Special Administrative Region

PC Submission on Competition Bill

Dear Chairman:

The Professional Commons understand that the Bill Committee on Competition Bill of the Legislative Council would like to seek stakeholders' view on exemption arrangements for statutory bodies. Our comments would therefore be restricted to this aspect of the Bill although we would mention in passing that we would like to see the Bill to be passed and implemented as soon as possible in order to provide a level playing field for all participants in the business sector.

For statutory bodies which have no or insignificant economic activities, we agree that these statutory bodies should be exempt.

For statutory bodies which engage in economic activity, it is proposed that such body will need to satisfy all four of the following criteria before such body could be made subject to the provisions of the Competition Bill:

- the statutory body is engaging in an economic activity in direct competition with another undertaking;
- the economic activity of the statutory body is affecting the economic efficiency of a specific market;
- the economic activity of the statutory body is not directly related to the provision of an essential public service or the implementation of public policy; and
- there are no other exceptional and compelling reasons of public policy against making such a regulation.

Although the Government has re-assured the public in its briefing papers that the adoption of these criteria is based on doctrines and case laws in overseas jurisdiction, we believe the Government has adopted an approach which has allowed the largest possible number of statutory bodies engaging in economic activity to be exempt from the Bill. These four criteria are the fundamentals and more information will need to be made available to the public regarding the reasons for adopting these criteria. For example, (a) and (b) are crafted using a factual criteria. Should statutory bodies not fall under the regulatory domain of the Bill if their economic activities are likely to be in direct competition with another undertaking or are likely to affect the economic efficiency of a specific market? (d) is giving the Chief Executive in Council a very wide discretion to establish exceptional circumstances not to include a statutory body within the Bill, we would like to know if there are guiding parameters to limit such discretion.

In short, we need to be assured that (a) to (d) are reflecting the best prevailing international practice before we can take a view on the list of the exempt statutory bodies which are engaging in economic activity.

Kenneth Leung
Vice-chairman, The Professional Commons