

17 April 2012

**Bills Committee on Competition Bill**  
Legislative Council Complex  
1 Legislative Council Road  
Central

Dear Chairman and Deputy Chairman,

**Exclusion regime for statutory bodies**

1. On different occasions, **Global Sources** has explained why the proposed exclusion regime for statutory bodies is totally inappropriate for Hong Kong.<sup>1</sup> Global Sources is particularly disappointed and concerned that the Government is still proposing to exclude the Hong Kong Trade Development Council (TDC) from the scope of application of the conduct rules in the proposed Competition Bill. This proposal is totally unjustified and if adopted will distort competition in the Hong Kong exhibition industry to the detriment of Hong Kong businesses and consumers.
  
2. We, Global Sources, are not alone in denouncing the proposed exclusion of the TDC. The Legislative Council's website reveals that other significant players in the exhibition industry also object to this proposal, including:
  - **UBM Asia** – a large exhibition organiser in Hong Kong, who each year organises in Hong Kong the World's No. 1 jewellery exhibition (the "HK Jewellery & Gem Fair"), as well as Asia's largest - and the World's second largest - beauty trade show event (the "Cosmoprof Asia"). Their submission to the Bills Committee can be viewed at: <http://www.legco.gov.hk/yr09-10/english/bc/bc12/papers/bc120228cb1-1143-2-e.pdf>.
  
  - **REED Exhibitions** – the World's largest exhibition organiser, who runs the World's biggest exhibition focusing purely on commercial aviation which is held in Hong Kong every two years (the "Asian Aerospace International Expo and Congress"). Their submission to the Bills Committee can be viewed at: <http://www.legco.gov.hk/yr09-10/english/bc/bc12/papers/bc120228cb1-1143-3-e.pdf>.
  
  - **PICO Far East Holdings** – a Hong Kong listed company, which is a major exhibitions contractor, as well as being engaged in the exhibition organiser business, in Hong Kong and elsewhere. Their submission to the Bills Committee can be viewed at: <http://www.legco.gov.hk/yr09-10/english/bc/bc12/papers/bc120228cb1-1398-1-e.pdf>.
  
3. All have explained why the TDC exclusion will cause damage to Hong Kong and to the overall competitiveness of the local exhibition industry. All have stated loud and clear their

<sup>1</sup> Reference is made to previous submissions to the Bills Committee by Global Sources, including those which can be viewed at:  
 - <http://www.legco.gov.hk/yr09-10/english/bc/bc12/papers/bc121129cb1-516-4-e.pdf>;  
 - <http://www.legco.gov.hk/yr09-10/english/bc/bc12/papers/bc120720cb1-2730-4-e.pdf>;  
 - <http://www.legco.gov.hk/yr09-10/english/bc/bc12/papers/bc121206cb1-518-3-e.pdf> ;  
 - <http://www.legco.gov.hk/yr09-10/chinese/bc/bc12/papers/bc12cb1-1063-3-ec.pdf>;  
 - <http://www.legco.gov.hk/yr09-10/chinese/bc/bc12/papers/bc120228cb1-1166-2-c.pdf>; and  
 - <http://www.legco.gov.hk/yr09-10/chinese/bc/bc12/papers/bc120319cb1-1348-1-c.pdf>.

opposition to the TDC's exclusion from the scope of the law.

4. It is no coincidence that the other main exhibition venue operator, **AsiaWorld-Expo Management**, has also repeatedly expressed concerns about the need to maintain a competitive level playing field in the Hong Kong exhibition industry. Their submissions to the Bills Committee can be viewed at: <http://www.legco.gov.hk/yr09-10/chinese/panels/ci/papers/ci0420cb1-1635-2-c.pdf>, and <http://www.legco.gov.hk/yr09-10/english/bc/bc12/papers/bc121129cb1-516-21-e.pdf>.
5. The broad sentiment against the extraordinary statutory body exclusion regime is not limited to the exhibition industry: banks, Cathay Pacific, the property developers, the Law Society of Hong Kong and other stakeholders are all against the unjustified regime.<sup>2</sup>
6. Global Sources still maintains that the TDC should not be granted such a broad blanket exclusion from the outset. Moreover, given all the valid, serious and widespread concerns and objections raised by numerous exhibition industry stakeholders against such an ill-conceived exclusion regime, it is difficult to understand why the Government is not even considering the adoption of some important measures to at least mitigate the harmful effects of the proposed regime, for example:
  - Any exclusion granted to the TDC should be strictly limited to its trade promotion activities and should not extend to its commercial (e.g. exhibition) activities.
  - The Bill should provide for additional safeguards to ensure that excluded statutory bodies will not engage in anticompetitive conduct. The Competition Commission should review the list of excluded statutory bodies at regular intervals and recommend that any excluded statutory body engaging in anticompetitive conduct be made subject to the conduct rules. The Competition Policy Advisory Group (COMPAG) should be made more independent and it should have a statutory basis with increased powers to investigate and sanction anticompetitive conduct by excluded statutory bodies.

#### A. A partial exclusion for the TDC

7. Global Sources fully acknowledges that the TDC fulfils important statutory missions. It plays a key role in developing and promoting Hong Kong's trade by making it easier for SMEs to promote and sell their products abroad. However it is important to distinguish between the two different types of activities performed by the TDC.
8. On the one hand, the TDC engages in non-commercial trade promotion activities such as supporting and organising trade delegation missions abroad. These activities are non-commercial in nature and directly benefit all Hong Kong businesses. The TDC is uniquely

<sup>2</sup> Reference is made to submissions to the Bills Committee by:

- the Hong Kong Association of Banks, which can be viewed at: <http://www.legco.gov.hk/yr09-10/english/bc/bc12/papers/bc120228cb1-1166-11-e.pdf>;
- the Law Society of Hong Kong, which can be viewed at: <http://www.legco.gov.hk/yr09-10/english/bc/bc12/papers/bc121129cb1-516-6-e.pdf>;
- Cathay Pacific, which can be viewed at: <http://www.legco.gov.hk/yr09-10/english/bc/bc12/papers/bc120228cb1-1124-12-e.pdf>;
- the Real Estate Developers Association of Hong Kong, which can be viewed at: <http://www.legco.gov.hk/yr09-10/english/bc/bc12/papers/bc120228cb1-1202-5-e.pdf>; and
- Hong Kong Small and Medium Enterprises Association, which can be viewed at: <http://www.legco.gov.hk/yr09-10/chinese/bc/bc12/papers/bc120228cb1-1202-2-c.pdf> and <http://www.legco.gov.hk/yr09-10/chinese/bc/bc12/papers/bc121129cb1-592-3-c.pdf>.

placed to carry out these activities which are closely linked to the implementation of the Government's trade policies. Global Sources can understand why these activities should remain outside of the remit of any future competition legislation.

9. On the other hand, the TDC engages in exhibition businesses and other commercial activities for which it competes with other market players. As you know, the TDC is the largest exhibition organiser in Hong Kong, with a 46% market share in the trade exhibition industry. The TDC itself acknowledges that for these activities it "operates on commercial principles" and that it "competes healthily with other industry players on an equal footing." (LC Paper No. CB(1)1533/03-04(01)). To ensure a competitive level-playing field, the TDC should not benefit from any exclusion regime in relation to these commercial activities.
10. Competition law creates strong incentives for all undertakings to improve their competitiveness in the form of lower prices, improved products or services, and wider ranges and choices of product or service offerings. These benefits will not arise in the exhibition industry if its market leader is excluded from competition law altogether. Excluding the TDC will distort competition and harm the many thousands of Hong Kong businesses that rely on a robust and competitive exhibition sector to promote their products. As explained on many previous occasions, there are no convincing reasons for excluding the commercial activities of the TDC from the scope of application of the Competition Bill. Nothing will prevent the TDC from carrying out its statutory missions and the Government will still be allowed to grant subsidies directly to exhibitors to support and promote SME businesses.

In the absence of any valid justifications, excluding the TDC is arbitrary and unfair. It would harm Hong Kong's reputation as a place of excellence for doing business in Asia.

11. In view of the mixed nature of the TDC's activities, Global Sources urges the Legislative Council members to ensure that if the TDC is to benefit from any exclusion regime, this exclusion regime should be only partial and not apply to any commercial activity carried out by the TDC. In other words, Global Sources is proposing that any exclusion regime for statutory bodies be *activity-based*, as opposed to *entity-based* as is currently contemplated. Any exclusion granted to the TDC should be limited to its non-commercial activities. Any broader exclusion regime would be grossly unfair, disproportionate and arbitrary.

## **B. Additional safeguard measures for excluded statutory bodies**

12. If notwithstanding its serious flaws, the proposed exclusion regime for statutory bodies is adopted without changes, Global Sources urges the Legislative Council members to ensure that additional safeguard measures are put in place to limit the risk that excluded statutory bodies might engage in anticompetitive conduct. Global Sources believes that both the Competition Commission and COMPAG should be granted with additional powers to monitor and, in the case of COMPAG, to also sanction, the conduct of excluded statutory bodies.
- B.1 With regard to the powers of the Competition Commission, Global Sources has the following proposals:
  - (a) The list of excluded statutory bodies should be periodically reviewed by the Competition Commission.
13. The list of excluded statutory bodies should be reviewed at regular intervals by the

Competition Commission. The Bill should expressly provide for a review or sunset mechanism whereby the Competition Commission would be required to periodically review the list of excluded statutory bodies and make recommendations to the Legislative Council and/or Chief Executive on whether to keep the list unchanged or add or remove one or more specific statutory bodies. The recommendations from the Competition Commission should be made publicly available and the Legislative Council and/or Chief Executive would need to justify any decision not to follow the Commission's recommendations. Because of the exceptional nature of the statutory body exclusion regime, this automatic review should take place at reasonable intervals. Global Sources proposes that such a compulsory review should take place say, every three years.

(b) Even before any regular sunset/review period is due, the Competition Commission should also at any time have the power to recommend changes to the list of non-excluded statutory bodies.

14. As you know, irrespective of whether they are excluded from the conduct rules, all statutory bodies will still be required to offer assistance whenever needed in investigations conducted by the Competition Commission under part 3 of the Bill. If, following any investigations or a third-party complaint, the Competition Commission uncovers a restriction of competition involving an excluded statutory body, the Commission should investigate the matter and if appropriate recommend to the Legislative Council and/or Chief Executive that the relevant excluded statutory body involved in anticompetitive conduct be added to the list of non-excluded statutory bodies as soon as practicable. Likewise, anytime before the regular sunset review, if the Competition Commission has reasonable grounds to believe that a particular statutory body stops fulfilling the specific conditions for exclusion set out in Article 5(2) of the Bill, the Competition Commission should investigate the matter further and if appropriate recommend to the Legislative Council and/or Chief Executive that the relevant excluded statutory body be added to the list of non-excluded statutory bodies as soon as practicable.

(c) The Competition Commission should be consulted before any decision is made on whether a newly established statutory body should benefit from the exclusion regime.

15. There should be no automatic exclusion regime for newly established statutory bodies. On the contrary, the Bill should expressly provide that the Competition Commission must be consulted before any decision is made on whether a newly established statutory body meets the conditions for exclusion under Article 5(2) of the Competition Bill. The recommendations from the Competition Commission should be made publicly available and the Chief Executive would need to justify any decision not to follow the Commission's recommendations.

B.2 With regard to the powers of COMPAG, Global Sources has the following proposals:

(a) COMPAG should have a statutory basis with increased powers to investigate and sanction anticompetitive conduct by excluded statutory bodies.

16. In its submission to the Legislative Council regarding its justifications for the proposed exclusion regime for statutory bodies (LC Paper No. CB(1)1324/11-12(01)), the Government states that it "will ensure that the exempted statutory bodies would not undertake anti-competitive activities unless there are justifiable causes. The Competition

Policy Advisory Group (COMPAG) will receive and investigate complaints against anti-competitive behaviour of exempted statutory bodies. (...) [I]t would be able to handle complaints on statutory bodies with the assistance of the relevant Bureau and Department.”

17. The proposed COMPAG supervision is identical to the existing administrative, policy-based COMPAG regime and is by no means satisfactory. For example, Global Sources has lodged a complaint with COMPAG against the TDC’s anticompetitive conduct more than two years ago, and to date COMPAG has failed to release even an interim report on the investigation.
18. Without a statutory basis, the very existence of COMPAG is left entirely to the discretion of the Government. What is more, the investigatory powers of COMPAG and any assisting governmental bureaus are very limited. As to the rectification requirements that can be imposed upon infringing statutory bodies, COMPAG cannot impose any pecuniary sanctions, nor enter into any binding commitments to put an end to anticompetitive conduct, nor award any compensatory damages to aggrieved parties.
19. The effectiveness of the COMPAG regime has been called into questions by others as well. Nearly a decade after COMPAG’s establishment, a Competition Policy Review Committee (CPRC) was appointed to review the COMPAG regime’s effectiveness in promoting Hong Kong’s competition policy. In the CPRC’s report dated June 2006, it was observed that:

“COMPAG and most of the relevant government agencies that follow up on complaints to COMPAG do not have sufficiently extensive investigative powers to undertake in-depth inquiries. Therefore it is difficult for COMPAG to reach any conclusive findings that anti-competitive conduct has taken place and to publicise its findings as a deterrent to others. (...)

The only effective sanction that could be deployed would be to “name and shame” companies engaged in anti-competitive behaviour, which, given the ease with which companies can exit and re-enter markets under new names, would provide at best only a limited deterrent. Such an approach would likely cause the public to question the Government’s resolve in tackling anti-competitive conduct in Hong Kong.(...)

The CPRC has noted that few of the complaints that have been referred to COMPAG have been substantiated... In this context, the effectiveness of COMPAG in dealing with abuse would continue to be limited unless it were to have statutory powers to investigate and sanction anti-competitive conduct.”

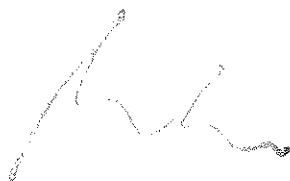
(paragraphs 40, 41 and 60 of the CPRC’s report, emphasis added)

20. It was because of these concerns that the CPRC recommended the adoption of a competition law regime with a statutory basis. The CPRC report also emphasized the importance of a competition law regime conferring the regulatory authorities with effective powers to thoroughly investigate suspected anticompetitive conduct (including requiring any person to provide information and documents, searching premises and seizing evidence) and impose sufficiently deterrent civil penalties.
21. Global Sources therefore suggests that, in order to guarantee the efficacy of the Government’s proposal, COMPAG’s investigatory and enforcement powers need to be strengthened as the CPRC has recommended. Specifically, Global Sources proposes that

the Competition Bill should expressly recognize COMPAG as the dedicated competition authority for excluded statutory bodies and that COMPAG be conferred with similar powers of investigation and enforcement as those of the Competition Commission.

- (b) The composition and enforcement procedures of COMPAG should be reviewed to guarantee its independence.
22. When COMPAG was set up in 1997, it was established mainly as an internal policy discussion forum of the Government. It is chaired by the Financial Secretary and its members include Government officials with sometimes direct management or supervision powers over statutory bodies. The COMPAG Secretariat is staffed with officers from the Commerce and Economic Development Bureau. When it comes to handling complaints, COMPAG does not have the necessary manpower to conduct investigations and in most cases it simply refers the complaints to the relevant governmental bureaus and departments for internal investigation. In other words, the current regime leads the government investigating itself, which is completely unsatisfactory and contrary to the rule of law.
23. COMPAG's current composition and functioning rules make it unfit to effectively supervise statutory bodies. For the regime to work, COMPAG should be independent from the statutory bodies it is tasked to supervise. Global Sources therefore proposes to structurally broaden the composition of COMPAG to include a wider range of representatives from the private sector. The COMPAG Secretariat should no longer be attached to the Commerce and Economic Development Bureau and should have its own dedicated experts and staff to conduct independent investigations. Finally to ensure a fair and unbiased procedure, there should also be transparent procedural rules stipulating the manner in which COMPAG is to investigate and rectify alleged anticompetitive conduct.
24. We hope that the Bills Committee shares our views on the need for additional safeguards for Hong Kong, should the Government persist in wanting to exclude most statutory bodies from the competition conduct rules. Should you wish to discuss any of the points raised, we would be happy to accommodate the Committee.

Yours sincerely,



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Global Sources

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Secretary for Commerce and Economic Development