



**LICENSING EXECUTIVES SOCIETY CHINA
HONG KONG SUB-CHAPTER**

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(By post and by email)

13 December 2011

Bills Committee on Competition Bill

Legislative Council
1 Legislative Council Road
Central, Hong Kong
Email: cb2@legco.gov.hk

**Deputy Secretary for Commerce & Economic Development
(Commerce and Industry) 1**

22-23/F, West Wing, Central Government Offices
2 Tim Mei Avenue
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Email: linda_lai@cedb.gov.hk

Dear Sirs/Madams,

Submission to Bills Committee on Competition Bill

We, Licensing Executives Society China, Hong Kong Sub-Chapter, were established to promote licensing and to serve the interests of our Hong Kong members who are mainly engaged in licensing of intellectual property rights and the transfer of technology, from technical know-how and patented inventions to software, copyright, design and trade marks. One of our key objectives is to promote business creativity and innovation among the small and medium enterprises ("SMEs") in Hong Kong.

We write to appeal for an exemption from the Competition Bill (the "Bill") for the Hong Kong Trade Development Council ("HKTDC"), a statutory body established under the Hong Kong Trade Development Council Ordinance (Cap. 1114) which has served as the international marketing arm for Hong Kong based traders, manufacturers, suppliers and service providers since 1966.



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Our legal committee has studied carefully the Bill, the HKTDC's financial information and the submissions made by different bodies and organizations. After careful consideration of the study, our Council has come to a majority view that it is generally in the interests of the SMEs and the general public for HKTDC to be exempted from the future competition law in Hong Kong. Our main reasons are set out as follows:-

1. HKTDC is a non-profit making organization which forms part of Hong Kong's public sector policy implementation. The Bill is said to target at profit-making companies (in particular the major market players) in the private sector rather than organizations like HKTDC.
2. Many jurisdictions in Asia, such as Singapore and Indonesia, have also introduced broad exemptions from competition laws for statutory bodies.
3. Hong Kong SMEs are the main targets for the trade fairs organized by HKTDC. HKTDC usually offers lower prices to local SMEs than the mainland and overseas participants for the same service (e.g. booth rates) to encourage and enable them to participate in HKTDC's exhibitions. In the year 2009/10, more than 40,000 SMEs in Hong Kong used HKTDC's services at below market prices. This preferential pricing arrangement helps save much costs for SMEs and enhance their competitiveness but it will likely be subject to challenge under the new competition law if HKTDC is not exempted.
4. Some local SMEs, who are participants of the HKTDC's fairs, are offered free web-site advertising or other free services by HKTDC. Such arrangements, which are beneficial to SMEs, may again run the risk of being challenged as tying and bundling in contravention of the Second Conduct Rule in the new law if HKTDC is not exempted.



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5. Statistics show that a considerable percentage of new purchase orders (for consumer goods) received by Hong Kong companies originate from the trade fairs organized by the HKTDC. HKTDC's fairs are hence generally beneficial to the Hong Kong economy. It is undesirable for Hong Kong's economy and SMEs to hinder the continuation of such success with competition law issues.
6. Trade fairs organized by HKTDC also boost tourism in Hong Kong and benefit the catering, hotel and retail industries. More job opportunities are created as a result (especially for the less educated workforce).
7. If HKTDC was not exempted at the end of the day, it may be under close scrutiny of the Competition Commission and eventually be driven away from the exhibition industry. HKTDC will then have much less income and will no longer be able to provide the same level of subsidies to SMEs as it currently does (the HKTDC provided HK\$120,000,000 subsidies to SMEs in the year 2009/10). As a result, due to the absence of preferential trade fair pricing and reduction of subsidiaries, many SMEs may no longer be able to afford the fees and participate in trade fairs to promote their goods and services. The overall competitiveness of Hong Kong SMEs will be reduced, which is contrary to the aim of introducing the Bill.

To conclude, HKTDC shoulders an important public function to create and develop marketing opportunities for businesses, promote Hong Kong's economic development and support the growth of local traders, which are all for the benefit of Hong Kong as a whole. Given the importance of HKTDC's specific public function and non-profit-making's nature, we strongly believe local SMEs will suffer badly if HKTDC is not granted an exemption from the Bill.



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We sincerely hope that members of the Bills Committee are receptive to our comments and agree to exempt HKTDC from the future competition law to allow them to properly discharge their public functions without fear of any competition issues.

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Yours faithfully,

Alice Ngan

Chairman

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