

For Information

## **Legislative Council Panel on Economic Development**

### **Establishment of the Competition Commission and the Engagement Plan for the Guidelines Required under the Competition Ordinance**

#### **Purpose**

The Competition Commission (Commission) is required under the Competition Ordinance (Ordinance) to develop various guidelines and to consult the Legislative Council and any persons it considers appropriate before issuing such guidelines. This information paper updates the Panel on the Commission's preparation work in this aspect.

#### **Establishment of the Commission**

2. The Chairperson and Members of the Commission were appointed with effect on 1 May 2013. With the support of a seconded government team, the Commission has undertaken initial work to establish the Commission office, its internal procedures and financial and administrative systems, and set direction of work leading to full function of the Commission and the prospective full commencement of the Ordinance.

3. The recruitment process for the Commission staff has started in Q4 of 2013. By May 2014 a total of 27 staff members have reported duty including the Senior Executive Director and two Executive Directors. Seven more staff members will join the Commission by mid-2014. The Commission will continue with the process to recruit the remaining staff including the Chief Executive Officer. When completed, the Commission will have around 50 staff members including the top executive leadership, operations experts, legal and economic professionals, as well as a secretariat that supports the functioning of the Commission and the committees established under the Commission.

4. The Commission has also established connections with overseas counterparts and joined as a member to the International

Competition Network, an international forum of more than 120 competition authorities worldwide to share experience and best practices in competition law enforcement and advocacy work.

5. With the first batch of staff in place now, the Commission has moved from the initial establishment work to the preparation of various documents foreseen under the Ordinance.

### **Guidelines required by the Ordinance**

6. The Commission is required under the Ordinance to develop guidelines to –

- Indicate how the Commission will interpret and give effect to the First and Second Conduct Rules.
- Set out how applications for a decision or block exemption order are to be made and handled by the Commission.
- Indicate how complaints may be made.
- Outline procedures for deciding whether or not and how to conduct an investigation.
- Indicate how the Commission may interpret and give effect to the Merger Rule.

7. The guidelines will inform businesses and the general public how the Commission expects to enforce the Ordinance and its processes for considering applications. The guidelines however are not part of the legislation and they will not bind the Competition Tribunal in interpreting the Ordinance.

8. It is common practice for competition authorities around the world to supplement their competition laws with guidelines therefore there are many overseas references which the Commission can draw from. However, we are mindful that under the Ordinance, it is the Competition Tribunal to adjudicate and award penalties rather than the Commission and that the Ordinance was developed having regard to the local circumstances of Hong Kong. The forthcoming guidelines should be transparent, clear and user-friendly, and should be able to illustrate by way of examples relevant to the Hong Kong context how certain conduct may risk being anti-competitive, set out the Commission's thinking

processes and analytical steps in assessing if the competition rules are contravened, and provide procedural details on how applications, complaints, investigation and related processes will be conducted.

### **Engagement and consultation**

9. In order to develop guidelines which will best suit our needs, the Commission requires input from the businesses and other stakeholders especially their practical experience of the common trade practices in Hong Kong. With that input, we can provide more focused guidance in our guidelines.

10. The Commission therefore plans to engage the stakeholders to exchange views and solicit input from them before it publishes the draft guidelines for consultation. We think that an engagement process could serve the purpose of refreshing people's awareness of the major provisions of the Ordinance, hence paving the way to the subsequent consultation on the draft text of the guidelines.

11. We also consider that since the Ordinance has already been in place pending full implementation, the businesses should be encouraged to get familiar with the Ordinance and review their trade practices in order to be ready for compliance when the Ordinance comes into full effect. The Commission will advocate this message in the engagement process and discuss with businesses on how we may help them understand the Ordinance.

12. Timing-wise, we plan to –

#### Now to July 2014 - engagement

- Through the Commission website and publication to provide information about the Ordinance and to give context to the development of the guidelines.
- Approach major stakeholder groups to inform them of our preliminary thinking and hear their expectation on the guidelines.
- Hear from other stakeholders and members of the public if they have views on our work.

#### Starting from September - consultation

- Publish draft guidelines

- Undertake consultation with the Legislative Council, stakeholders and the public.

#### First half of 2015

- Finalise the guidelines after consultation
- Develop education and compliance tool kits for use by businesses.

13. The Commission aims at getting back to Members to consult them on the draft guidelines in Q4 of 2014.

**Competition Commission**  
**May 2014**