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13 March 2015

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Dear Mr Tso,

Competition (Turnover) Regulation (L.N. 38 of 2015)

Thank you for your letter of 10 March 2015. Our response is set out in the ensuing paragraphs.

Reference drawn from the Hong Kong Accounting Standards and Overseas Competition Laws

2. We have drawn reference from the Hong Kong Accounting Standards (HKAS) and overseas competition laws when making the Competition (Turnover) Regulation (“the Regulation”). More specifically, the HKAS 18 on Revenue, the UK’s regulations on the determination of turnover under the UK’s Competition Act, and Singapore’s “Competition (Financial Penalties) Order 2007 are particularly relevant. Extracts of these documents (available in English only) are provided at **Annex**.

Determination of turnover for “credit institutions”, “financial institutions” and insurance undertakings”

3. Turnover under the Competition Ordinance (“the Ordinance”) refers to “total gross revenues” of an undertaking, and the Regulation further clarifies that the total gross revenues of the undertaking are the amounts derived by the undertaking from the undertaking’s ordinary activities. This brings the concept of turnover under the Ordinance in line with the accounting standards on revenue as set out in HKAS 18 which deals with revenue that arises in the course of ordinary activities of an entity. We note that HKAS 18 has provided accounting guidance on revenue arising from rendering of services, and included a whole range of examples to illustrate how various services income, including but not limited to that of insurance and financial services, would be recognised as revenue. The HKAS 18 should have provided a clear and comprehensive guidance for undertakings operating in various services sectors. In this light, we do not consider it necessary to make separate provisions in the Regulation for undertakings in the financial and insurance sectors as in the case of the UK.

“Ordinary activities”

4. The use of the term “ordinary activities” for revenue is a concept familiar to the accounting profession and generally applied in the auditing of accounts. The HKAS 18 refers to the income arising from the sale of goods, the rendering of services or the use by others of entity assets yielding interest, royalties and dividends as the revenue from an entity’s ordinary activities. Other inflows of economic benefits, for example, contributions made by investors, amounts collected on behalf of the principal by an agent, etc., are not considered as revenue from an entity’s ordinary activities. The term “ordinary activities” is also often used in comparable overseas competition laws for the purpose of determination of turnover without a separate definition. Given the above, we do not consider it necessary to define the term “ordinary activities” in the Regulation.

Yours sincerely,



(Sam Hui)

for Secretary for Commerce and Economic Development

**Relevant Extract of Hong Kong Accounting Standard
and overseas competition law**

Extract from Hong Kong Accounting Standard 18 – Revenue

“1 This Standard shall be applied in accounting for revenue arising from the following transactions and events:
(a) the sale of goods;
(b) the rendering of services; and
(c) the use by others of entity assets yielding interest, royalties and dividends.”

“7 The following terms are used in this Standard with the meanings specified:

Revenue is the gross inflow of economic benefits during the period arising in the course of the ordinary activities of an entity when those inflows result in increase in equity, other than increase relating to contributions from equity participants. ...”

“8 Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.”

Extract from the UK's Competition Act 1998 (Determination of Turnover for Penalties) Order 2000

Schedule – Applicable turnover

General

“3. The applicable turnover of an undertaking, other than a credit institution, financial institution, insurance undertaking, or an association of undertakings, shall be limited to the amounts derived by the undertaking from the sale of products and the provision of services falling within the undertaking's ordinary activities to undertakings or consumers in the United Kingdom after deduction of sales rebates, value added tax and other taxes directly related to turnover.

4. Where an undertaking consists of two or more undertakings that each prepare accounts then the applicable turnover shall be calculated by adding together the respective applicable turnover of each, save that no account shall be taken of any turnover resulting from the sale of products or the provision of services between them.”

Turnover of associations of undertakings

“7. The turnover of an association of undertakings shall be the aggregate applicable turnover of the undertakings that are members of the association.”

Aid granted to undertakings

“8. Any aid granted by a public body to an undertaking which relates to one of the undertaking's ordinary activities shall be included in the calculation of turnover if the undertaking is itself the recipient of the aid and if the aid is directly linked to the sale of products or the provision of services by the undertaking and is therefore reflected in the price.”

Extract from the UK's Competition Act 1998 (Determination of Turnover for Penalties) Order 2004

Amendment to the 2000 Order

“2.—(1) The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000(b) is amended as follows.

...

(4) In the Schedule—

(a) in paragraph 1(1), the definition of “branch” shall cease to have effect;

(b) in paragraph 3, the words “to undertakings or consumers in the United Kingdom” shall cease to have effect;

...”

Extract from Singapore’s Competition (Financial Penalties) Order 2007

The Schedule – Applicable Turnover

“1. Unless the circumstances otherwise require, the applicable turnover of an undertaking, other than an association of undertakings, shall be limited to the amounts derived by the undertaking from the sale of products and the provision of services falling within the undertaking’s ordinary activities in Singapore after deduction of sales rebates, goods and services tax and other taxes directly related to turnover.

2. Subject to paragraph 3, where an undertaking consists of 2 or more undertakings that each prepare accounts then the applicable turnover shall be calculated by adding together the respective applicable turnover of each, save that no account shall be taken of any turnover resulting from the sale of products or the provision of services between them.

3. The applicable turnover of an association of undertakings shall be the aggregate applicable turnover of the undertakings that are members of the association.”