

For Information

Legislative Council Panel on Economic Development
Draft Guidelines Made Under the Competition Ordinance

Purpose

This information paper updates the Panel on the Competition Commission's (Commission) recent activities and publication of first drafts of the guidelines (Draft Guidelines) required by the Competition Ordinance (Ordinance). Following the receipt of feedback from the public on the current version of the Draft Guidelines and revision of the text, the Commission will consult the Legislative Council and any persons it considers appropriate before adopting and issuing the guidelines.

Engagement with stakeholders prior to publication of the Draft Guidelines

2. In May 2014 the Commission informed the Panel of its intention to engage stakeholders to exchange views and solicit input prior to the publication of a first draft of the guidelines. The engagement process was also to serve the purpose of refreshing people's awareness of the major provisions of the Ordinance. On 26 May, following the Commission's appearance at the meeting of the Panel that day, the Commission published a booklet entitled "Getting Prepared for the Full Implementation of the Competition Ordinance".

3. In the period May to August 2014 the Commission held meetings with the major chambers, a large range of industry associations, representatives of small and medium-sized enterprises (SMEs) and a wide variety of professional bodies. The Commission also participated in a number of seminars, conferences and forums. In total, the Commission participated in over fifty events during this period.

4. Mindful of its statutory function to ensure that SMEs are fully informed of the requirements of the Ordinance, the Commission organised a seminar for SMEs at the end of June. The seminar proved so popular that a second and then a

third seminar were held in July.

Publication of the Draft Guidelines

5. The Commission, together with the Communications Authority (CA) which has concurrent jurisdiction with the Commission to enforce the Ordinance in relation to the anti-competitive conduct of certain businesses operating in the broadcasting and telecommunications sectors, published six Draft Guidelines on 9 October 2014 to offer guidance on:

- (a) the manner in which the Commission¹ expects to interpret and give effect to:
 - the First Conduct Rule (Guideline on the First Conduct Rule)
 - the Second Conduct Rule (Guideline on the Second Conduct Rule)
 - the Merger Rule (Guideline on the Merger Rule);
- (b) the manner and form in which complaints are to be made (Guideline on Complaints);
- (c) the procedures it will follow in deciding whether or not to conduct an investigation and the procedures it will follow in conducting an investigation (Guideline on Investigations); and
- (d) the manner and form in which it will receive applications for a Decision under Sections 9 and 24 (Exclusions and Exemptions) and Section 15 Block Exemption Orders (Applications Guideline).

6. The Commission also published an Overview summarising the Commission's approach to preparing the Draft Guidelines and the process for providing comments on the drafts. A media release and series of responses to Frequently Asked Questions were also published. This additional material and the Draft Guidelines were published on the Commission's website and also emailed to over 1,000 interested parties. As of 17 November, there had been 11,139 hits on the Chinese and English versions of this material on the Commission's website.

7. Where appropriate, the Commission has drawn on best practices from other competition law regimes when developing the Draft Guidelines. They were

¹ References to the Commission in this paper includes the CA so far as the Draft Guidelines are concerned.

drafted taking account of the views and feedback the Commission collected during the engagement exercise conducted between May and August. The Draft Guidelines include many hypothetical examples to assist businesses to understand and comply with the Ordinance.

8. The Draft Guidelines reflect the Commission's interpretation of the Ordinance and provide guidance on how the Commission will undertake its functions under the Ordinance. The Guidelines do not represent legal determinations of the meaning of the Ordinance. The Competition Tribunal and other courts are responsible ultimately for interpreting the Ordinance. The Commission's interpretation of the Ordinance does not bind the Tribunal and other courts.

9. Submissions on the Draft Guidelines are being received from a wide range of parties and will be posted on the Commission's website. The Commission is carefully considering the comments that are being made. Further submissions are expected to be received by the consultation deadline of 10 December. The Commission has indicated that submissions received after the deadline will be considered where it was practicable to do so with a view to being as accommodating as possible without delaying its work program. The Commission will be publishing a report on the submissions received and its response.

Advocacy and Engagement following release of the Draft Guidelines

10. To coincide with the release of the Draft Guidelines, the Commission launched a campaign to inform Hong Kong businesses and the general public about the Ordinance. Two TV/ radio Announcements of Public Interest (API) were prepared for broadcast during October and November. Additionally a two minute video about cartels was produced and uploaded to the Commission's website and on YouTube. The video has also been incorporated into all the Commission's presentations. A media and advertising campaign is being conducted involving a mix of new and conventional media channels including newspapers, bus TV, MTR, online and social media platforms.

11. On 24 October 2014, the Commission and the Office of the Communications Authority, the executive arm of the CA, jointly held a seminar for the broadcasting and telecommunications sectors on the Draft Guidelines. Over 50 industry representatives attended.

12. The Commission held a seminar for SMEs on 7 November attended by over 160 participants. An additional seminar is scheduled for 3 December. The focus of the seminars is to explain the Ordinance and the main features of the Draft Guidelines to assist SMEs to get ready to comply when the Ordinance comes into full effect.

13. The Commission is also planning a series of publications aimed directly at the SME sector. The first brochure, outlining the main features of the Ordinance that are relevant to SMEs, will be published in December 2014.

14. Since the publication of the Draft Guidelines the Commission has been participating in a variety of seminars, conferences and meetings organised by stakeholders with a view to publicising the Draft Guidelines and the Ordinance more generally. Particular focus has been given to advising businesses how they can prepare for the full implementation of the Ordinance.

15. Staff of the Commission have been available to respond to questions from any sector of the business community or the general public. Additionally the Commission has regularly engaged with the media to explain various aspects of the Ordinance and the Draft Guidelines.

Next Steps

16. Following consideration of the submissions received, the Commission will revise and refine the present Draft Guidelines. Consultation on a further draft of the guidelines with the Legislative Council and other appropriate persons, as required by the Ordinance, will occur early in 2015. Following that consultation process the Commission will adopt and issue the finalised guidelines.

17. The Commission recognises that in addition to the guidelines prescribed by the Ordinance, there are a number of other publications that advisers and specific sectors may find helpful. Separately to the consultation on the Draft Guidelines the Commission will continue to prepare and release policies (such as a Leniency Agreement Policy and an Enforcement Policy) and publications (such as the easy to follow leaflets and booklets for SMEs mentioned above) to assist businesses and their advisers in understanding how to comply with the Ordinance.

18. The Commission is completing its internal preparations including further recruitment of staff and establishing operational policies and processes. It is

anticipated that both the external publication program and the internal preparations will be completed by the middle of 2015. The Commission will continue to engage actively with the business sector and the general public to ensure they are ready for the full implementation of the Ordinance.

Competition Commission
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