

L.N. 38 of 2015

Competition (Turnover) Regulation

(Made by the Secretary for Commerce and Economic Development under section 163 of the Competition Ordinance (Cap. 619))

1. Commencement

This Regulation comes into operation on 17 April 2015.

2. Determination of turnover of undertaking

- (1) For the purpose of section 93 of the Ordinance, in determining the turnover of an undertaking, the total gross revenues of the undertaking are the amounts derived by the undertaking from the undertaking's ordinary activities in Hong Kong after deduction of the following (if any)—
 - (a) sales rebates;
 - (b) taxes directly related to the revenues.
- (2) For the purpose of sections 5 and 6 of Schedule 1 to the Ordinance, in determining the turnover of an undertaking, the total gross revenues of the undertaking are the amounts derived by the undertaking from the undertaking's ordinary activities, whether in Hong Kong or outside Hong Kong, after deduction of the following (if any)—
 - (a) sales rebates;
 - (b) taxes directly related to the revenues.

- (3) For subsections (1) and (2)—
 - (a) if an undertaking receives any sum from a public body by way of grant, subsidy or similar financial assistance in return for a contractual obligation to supply goods or services to a third party, the sum is to be recognized as an amount derived by the undertaking from the undertaking's ordinary activities; and
 - (b) if an undertaking consists of 2 or more undertakings and each of those undertakings prepares accounts, the total gross revenues of the undertaking are the total gross revenues of all those undertakings, but no account is to be taken of revenues resulting from the transactions between those undertakings.

3. **Specification of turnover period for purpose of section 5(4) of Schedule 1 to Ordinance**

- (1) For an undertaking referred to in section 5(4)(a)(i) or (b)(i) or (ii) of Schedule 1 to the Ordinance, the turnover period is the preceding calendar year.
- (2) For an undertaking referred to in section 5(4)(a)(ii) of Schedule 1 to the Ordinance, the turnover period is the financial year of the undertaking that ends in the preceding calendar year.
- (3) In this section—
preceding calendar year (對上公曆年) has the meaning given by section 5(5) of Schedule 1 to the Ordinance.

4. Specification of turnover period for purpose of section 6(3) of Schedule 1 to Ordinance

- (1) For an undertaking referred to in section 6(3)(a)(i) or (b)(i) or (ii) of Schedule 1 to the Ordinance, the turnover period is the preceding calendar year.
- (2) For an undertaking referred to in section 6(3)(a)(ii) of Schedule 1 to the Ordinance, the turnover period is the financial year of the undertaking that ends in the preceding calendar year.
- (3) In this section—
preceding calendar year (對上公曆年) has the meaning given by section 6(4) of Schedule 1 to the Ordinance.

Gregory SO
Secretary for Commerce and
Economic Development

12 February 2015

Explanatory Note

This Regulation provides for the determination of the turnover of an undertaking and specifies the turnover period for the purposes of the Competition Ordinance (Cap. 619) (*Ordinance*). Turnover and turnover period are the measurements of eligibility for exclusion under section 5 (agreements of lesser significance) and section 6 (conduct of lesser significance) of Schedule 1 to the Ordinance. Turnover is also the measurement to determine the cap on pecuniary penalties imposed under section 93 of the Ordinance.

2. Section 1 provides for the commencement of the Regulation.
3. Section 2 provides for the determination of the turnover of an undertaking for the purpose of section 93 of, and sections 5 and 6 of Schedule 1 to, the Ordinance. Section 2 also contains provisions relating to the following undertakings—
 - (a) undertakings that receive any sum from a public body by way of grant, subsidy or similar financial assistance in return for a contractual obligation to supply goods or services to a third party; and
 - (b) undertakings that consist of 2 or more undertakings and each of those undertakings prepares accounts.
4. Section 3 specifies the turnover period for an undertaking referred to in section 5(4) of Schedule 1 to the Ordinance.
5. Section 4 specifies the turnover period for an undertaking referred to in section 6(3) of Schedule 1 to the Ordinance.