

香港特別行政區政府
商務及經濟發展局
工商及旅遊科



COMMERCE, INDUSTRY AND TOURISM BRANCH
**COMMERCE AND ECONOMIC
DEVELOPMENT BUREAU**
GOVERNMENT OF THE HONG KONG
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27 April 2017

Ms Shirley CHAN
Clerk to Panel on Economic Development
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms CHAN,

**Motions Passed at the Meeting of
the Legislative Council Panel on Economic Development
on 27 March 2017**

At the meeting the Legislative Council (“LegCo”) Panel on Economic Development (“Panel”) on 27 March 2017, Members passed two motions under the agenda item of “Report on the work of the Competition Commission”. After consulting the Competition Commission (“Commission”), we write to provide our response to the two motions as follows:

- (1) This Panel urges the Government to expeditiously review and consider increasing the manpower and financial resources for the conduct of investigation and enforcement by the Competition Commission, in order to enhance the enforcement efficiency of the Commission. The Panel also suggests that the Administration should consider enhancing the Competition Ordinance by introducing the mechanism of initiating private actions, which will give the public an additional channel to seek justice, as well as safeguard the interests of the small and medium enterprises and consumers. (Motion moved by: Hon Holden CHOW Ho-ding)**

2. The Government provides recurrent subvention to the Commission in order to enable the Commission to carry out effectively the functions specified in the Competition Ordinance (Cap. 619) ("Ordinance"), including investigation, enforcement, education and research, etc.

3. The Government has been liaising closely with the Commission on its operational and financial position. We will seek funding for the Commission having regard to its actual operational needs (including progress on its enforcement and litigation work), and explore appropriate means for providing resources to the Commission to support its work.

4. As regards the suggestion to provide for stand-alone private actions under the Ordinance, the Competition Bill introduced by the Government into the LegCo in 2010 contained provisions which allowed stand-alone private actions, to the effect that any person who had suffered loss or damage as a result of a contravention of a conduct rule might bring legal action in the Competition Tribunal ("Tribunal"). However, during the scrutiny of the Bill, small and medium enterprises ("SMEs") expressed concern that stand-alone private actions might be abused by large enterprises to oppress SMEs. Some LegCo Members also shared a similar view. In view of such concern, the Government removed the relevant provisions.

5. Under the Ordinance, the Commission is responsible for bringing proceedings in the Tribunal. Any person may lodge a complaint with the Commission in respect of contraventions of the conduct rules, and persons who have suffered loss or damage as a result of contraventions determined by the Tribunal may initiate follow-on actions.

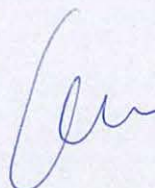
6. After the Ordinance has been in operation for a number of years, we will review it, including the need to provide for stand-alone private actions, taking into account the experience gained and problems encountered.

(2) This Panel urges the Competition Commission to enhance liaison with professional bodies and professionals and develop practice notes, so as to assist trades and bodies in changing their respective traditions of operation and codes of conduct, thereby avoiding posing a dilemma for professionals who are under conflicting circumstances required to comply with the law and the respective codes of conduct. (Motion moved by: Dr Hon YIU Chung-yim)

7. The Commission has been actively reaching out to different trade associations and professional bodies to enhance their understanding of the Ordinance. For instance, to prepare trade associations and professional bodies for the full implementation of the Ordinance, the Commission launched a project in mid-2015 targeting these associations. The project comprised publication of "The Competition Ordinance and Trade Associations" brochure, a series of seminars and meetings, and direct communication with different trade associations and professional bodies. Also, the Commission's Guideline on the First Conduct Rule contains a section detailing issues of specific relevance to trade associations and similar bodies (paragraphs 6.53 to 6.68 of the Guideline). As a result of the Commission's engagement efforts, most of the high-risk practices identified by the Commission have been rectified by the relevant associations, and provisions in their respective codes of conduct which may raise competition concerns (such as price restrictions or recommended fee scales) have also been removed.

8. The Commission will continue to liaise with different trade associations and professional bodies by conducting engagement briefings, meetings and direct communication to assist them and their members to understand and comply with the Ordinance.

Yours sincerely,



(Leona Law)

for Secretary for Commerce and Economic Development

c.c. Hon Anna WU, GBS, JP, Chairperson, Competition Commission