

**Television Broadcasts Limited**

**電視廣播有限公司**



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By email: [competition@edlb.gov.hk](mailto:competition@edlb.gov.hk)  
and by post

6 February 2007

Economic Development Branch (Division A)  
Economic Development and Labour Bureau  
2/F., Main Wing, Central Government Office  
Lower Albert Road  
Central  
Hong Kong

Dear Sirs,

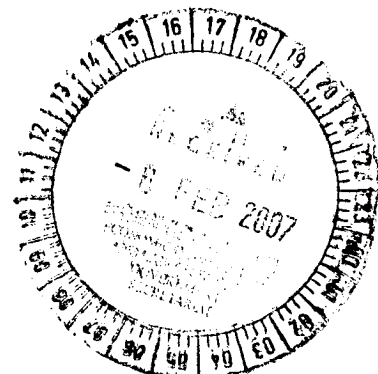
**Re: Promoting Competition - Maintaining our Economic Drive**

We enclose our response to the above public discussion document.

Yours faithfully,

S K Cheong

SKC/TL/ps



## **Response by Television Broadcasts Limited on “Promoting Competition – Maintaining our Economic Drive”**

**January 2007**

Television Broadcasts Limited welcomes the Government’s initiative to consult the community on the appropriate way forward for Hong Kong’s competition policy and related issues.

We would like to express our comments and views on the twenty key questions identified in the consultation paper:

1. We support Hong Kong to develop a new competition law that is appropriate for Hong Kong. We agree that to maintain Hong Kong’s competitiveness in relation to other developed countries, and having regard to the fact that the sector specific competition legislation has been introduced for a number of years, it is time that Hong Kong should catch up with other competitive trade nations. Without legislative support, the role of COMPAG is very limited in investigating any anti-competitive conduct or in imposing any sanction. The concerns raised by SMEs are not faced by other nations where there are competition laws. Further any unfounded complaints could be rejected by the competition authority in the first instance.
2. We believe if competition law were to be introduced in Hong Kong, it should apply to all sectors of the economy. There is no evidence to show that certain sector(s) are likely to be more vulnerable to anti-competitive behaviour than others. It would be difficult to justify which sector should be regulated. The benefits of having a general competition law applying to all sectors outweigh the benefits of a sector specific approach. Introducing a sector specific approach also cannot achieve the objective to bring Hong Kong up to international standards in terms of providing a transparent and competitive environment for business.
3. We agree with the CPRC’s recommendation that the Government should focus on the seven specific types of anti- competitive conduct at the initial stage of introduction of competition law. This will have the benefit of letting the community and the relevant authority to build up understanding and experience in this new area of law. Further, considering Hong Kong’s small population in a compact geographical area as compared with other developed countries, the whole set of competition rules as implemented in such countries may not be appropriate in the Hong Kong context. In any case, once the new competition law is in place, it would not be difficult to expand and amend the law to address any other area of concern in future should the case be called for after consultation with the community.
4. We support the seven types of anti-competitive conduct identified by CPRC to form the basis for the scope of the new competition law at the initial stage. We note that it is often difficult for any new law to be specific and detailed in definitions without compromising flexibility in any dynamic and changing environment. Having regard to the approach most commonly taken by other major jurisdictions and the current

approach adopted by the Telecommunications Ordinance and the Broadcasting Ordinance, we take the view that the law should provide for general prohibition against anti-competitive conduct and to supplement this with more detailed guidelines similar to those issued by the Telecommunications and Broadcasting Authorities.

5. Please refer to our comments in paragraph 4 above.
6. We submit that the legislation should restrain anti-competitive practices which have the “purpose” or “effect” of preventing, restricting or distorting competition and not the practices themselves per se. To regard a conduct on its own to be anti-competitive could interfere with acceptable business practices and may not be conducive to Hong Kong’s free-market and may even prevent conduct which has the effect of pro-competition rather than anti-competition in certain circumstances. The whole purpose of introducing competition law is to prevent practices that could impair economic efficiency or free trade. We believe the “purpose” and “effect” of preventing, restricting or distorting competition are essential elements for determining whether a conduct is anti-competitive.
7. It is often necessary in any legislation to provide for exclusions or exemptions in special circumstances. Similarly, the competition law should provide for exclusions and exemptions in the number of ways as described in paragraph 81 of the consultation paper. In formulating what exemptions should apply, we generally support to follow the model in the United Kingdom. Other than providing specific exemptions in legislation, by allowing the competition authority to grant exemption and an undertaking to seek exemption on a case-by-case basis would provide more flexibility without going through the legislative process. However, any exemptions granted should be guided by established and clear principles.
8. We believe the first option – a single authority with power to investigate and adjudicate is appropriate in light of the small market in Hong Kong. This can avoid the requirement to allocate more public resources for setting up a separate specialist tribunal or place additional workload on the Judiciary.
9. We support the setting up of a “two-tier” structure for the regulatory body to ensure there is an effective check and balance on the exercise of the power of the authority. With respect to appeal with regard to decisions made by the authority, we strongly advocate for a dedicated appeal board which can engage experienced personnel and accumulate expertise in the competition field in the long run.
10. We support the view that only the regulatory authority should be given the power to conduct formal investigations into possible anti-competitive conduct with power to initiate a formal investigation as well. This is in line with international practices and can prevent abuse of the law and process.
11. For the competition law to be effective, the regulatory authority must be vested with necessary power to obtain relevant information and documents and conduct searches where justified. We support the CPRC’s recommendation which is in line with the powers vested in the Telecommunication and Broadcasting Authorities.

12. Failure to cooperate with formal investigations by the regulatory authority should attract criminal liability similar to those provided for in the existing telecommunication and broadcasting legislation.
13. We support that any information provided to the regulatory authority should be afforded confidentiality in principle to protect the confidential information of both the complainants and the subject of complaints. The outlines set out in paragraph 116 of the consultation paper on how the matter is addressed under Singaporean law are useful as a reference. We would like to add that where the authority is authorized to disclose confidential information under specified circumstances, the affected party should be informed and given the opportunity to make representations to the authority before a final decision is made by the authority as to whether or not to disclose certain confidential information.
14. We agree that the current sector specific regimes in broadcasting and telecommunications should be retained as such regimes have already been operating for a number of years with accumulated knowledge of the concerned industries. To avoid duplication of efforts and overlapping of responsibilities, the law should clearly delineate the authorities and powers of the new regulators and the existing sector specific regulators. Any guidelines and procedural rules issued by the two authorities should be consistent.
15. We take that view that sufficiently high level of penalties with deterrent effect should be in place. The level of penalties can be similar to that provided under the Broadcasting Ordinance with power for the authority to apply to court for imposition of heavier fines. There should be no imprisonment for individuals involved in anti-competitive conduct but disqualification from holding a directorship or managerial function of any company for a period of time would help to strengthen the deterrent effect.
16. To encourage informants to come forward and facilitate the investigative process, we support a leniency programme that the regulator is allowed to exercise under guided principles.
17. We agree that the regulator should be given authority to issue "cease and desist" orders for quick and effective enforcement of the law.
18. The regulator should also be given authority to reach a binding settlement with the party under investigation. However we believe such authority should only be limited to first time offender of a new case and not repeated anti-competitive conduct.
19. The new competition law should allow parties who are affected to seek civil remedies (including damages and other appropriate remedy) from courts within a period of time. This would provide an additional deterrent effect.
20. The concerns of SMEs that they may face an onerous legal burden on the introduction of the new competition law and as a result of civil claims could be addressed by the power given to the competition regulatory authority to screen out

cases which are frivolous or vexatious at the early stage. Unless there is a finding of anti-competitive conduct, it is extremely unlikely that any civil claim based on anti-competitive conduct would be successful. We believe with the introduction of the new competition law, the SMEs stand to benefit more than bigger players in the market. By their market share, SMEs are unlikely to be the target of an anti-competitive investigation.