



February 5, 2007

Economic Development Branch (Division A)
Economic Development and Labour Bureau
2/F, Main Wing, Central Government Offices
Lower Albert Road
Central, Hong Kong
Fax: 2868.4679

Re: Response to Competition Law Consultation Paper

EDLB:

ExxonMobil affiliates in Hong Kong ("ExxonMobil") provide the following response to the public consultation paper entitled "Promoting Competition--Maintaining our Economic Drive" ("Consultation Paper"¹) issued on 6 November 2006.

General Comments

ExxonMobil fully supports fair competition. Government policies should prevent competition from being undermined by anticompetitive practices such as cartels.

For many years, Hong Kong has been one of the most dynamic and free economies in the world. Competition laws may further enhance that reputation, provided such laws are anchored in fair and equal treatment for all, and that they do not inhibit the forces of a free market system that has served Hong Kong so well for so long. Such laws, if enacted, must be based on clear policies and transparent rules fairly applied across all business sectors. We believe that the consultation paper raises the key questions needed to form a workable framework for development of a competition law.

Specific Comments

In the following, we seek to focus on the most significant questions/concepts raised in the Consultation Paper.

¹ References to Paragraph numbers ("Par. _") in this Response refer to the Paragraphs of the Consultation Paper.

Comprehensive Approach -- At the outset, we strongly urge against taking a "sectoral" approach as has been considered in the past. For Hong Kong, establishing different competition law requirements for different sectors will create complexity, uncertainty, and inconsistency that could impact the decisions of current and future investors. Such an approach could move Hong Kong from its position of a champion of free enterprise to one mired in arbitrary and uneven controls that would adversely interfere with the workings of a free market.

Focus on "Effect" on Market -- The Consultation Paper (Par. 80-85) raises the question of whether the competition law should govern "conduct" or "effect" (Par. 78-79). We believe it prudent that the law be designed to look at the *effect* of actions and avoid any "per se" violation concept. The "rule of reason" analysis adopted by other jurisdictions in which the competition authority examines, on a case by case basis, the overall effects of any particular conduct on competition, the market, and the general interest, to gauge whether, overall, it is pro-competitive or anti-competitive, is the most appropriate approach.

Separate Enforcement Authority -- From the experience of ExxonMobil affiliates world-wide, the best approach for an enforcement mechanism is to separate the regulatory/enforcement authority and adjudicatory regimes, as referenced in the Consultation Paper (Pars. 97-99), and as adopted in Australia. The benefits of such an approach noted in the Consultation Paper (objectivity of adjudication, check-and-balance, less potential for government protectionism) clearly make this approach the best one for Hong Kong.

Focus on as yet "Unregulated" Industries -- It is appropriate that the Consultation Paper and the Government of Hong Kong fully consider the fact that certain markets/industries are already regulated directly by Government. It would be duplicative and unnecessary for the competition law to be concerned with such markets/industries while other regulatory mechanisms are in place. As referenced already, any new competition law should "not create significant additional burdens on local business, nor encourage interference with normal business practices or economically efficient market structures." (Par. 47). Moreover, the Consultation Paper appropriately recognizes that the focus should be on conduct, as opposed to the number of companies in a particular sector. Having a small number of competitors is not anti-competitive per se -- indeed, in some cases, because of economies of scale and network efficiencies, the need for large fixed asset investments with long payback periods, and market structure or forces, it may be both efficient and inevitable. (Pars. 38, 45, 58-59).

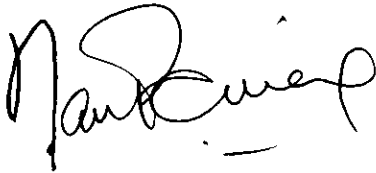
Keeping with the key concepts above will assist the Government of Hong Kong in achieving its ultimate objective on competition policy which is "to promote efficiency or the best use of resources from society's perspective," (par. 12), will best serve the economy as a whole (Par. 14), and would be consistent with the Government's existing policy on competition which is to "enhance economic efficiency and free flow of trade, thereby also benefiting consumers." (Par. 30).

Conclusion/Summary

ExxonMobil affiliates have vast and lengthy experience operating in numerous countries under varied competition law regimes. We are aware of 13 or more other countries that are in the process of developing competition laws and they all apply across various sectors.

ExxonMobil affiliates worldwide have adopted detailed policies, practices, and employee training regimes to ensure compliance with the laws of the jurisdictions governing their operations, as well as key aspects of US and EU laws (prohibitions on price fixing, bid-rigging, market allocation, joint boycotts, etc.).

We welcome the opportunity to provide further comments and input as those efforts mature to the drafting of legislation. A transparent and equally applied law provides for a level playing field to the benefit of everyone.



P.C. Tan
Chairman
ExxonMobil Hong Kong Limited



B.W. Corson
Chairman and Managing Director
ExxonMobil Energy Limited

