"Richard Paine"

11/01/2007 12:37

To <competition@edlb.gov.hk>
cc
bcc
Subject Competition Law

Urgent Return receipt Sign Encrypt

History: This message has been replied to.

Dear Sir,

Several eminent members of the business community in Hong Kong have publicly stated that Hong Kong does not need a Competition Law.

However we welcome the Competicn Policy Review Committees proposals to LEGCO and a law to target price-fixing, bid rigging unfair subsidies as well as abuse of a dominant market postion.

In this connection we wish to draw your attention to the whole issue of <u>TRANSFER PRICING</u>.

An Ernst & Young Survey of 30 countries conducted last year (source F.T. Sept 06) showed that companies pariticularly large multi-nationals, face a more adverserial approach from tax authorities.

The tax authorities (in developed countries) are under more pressure to deliver revenue gains by preventing companies from manipulating internal transactions to minimise tax bills.

The U.K. and other countries including China are begining to enforce transfer pricing rules. There is growing divergence on the arms length principle which stipulates that a subsidiary should charge another subsidiary the same price for goods and services that it would charge an independent company.

Companies should increasingly assume that in their global tax position steps taken in one country will have implications accross their entire operation.

Recently there have been some very specific examples and these include:-

(1) Hennessy Cognac Sales to Japan.

According to the Nihon Keizei Shinbun, Jardine Wines & Spirits imported Hennessy from a related company in Singapore. It seems the import transfer price was set higher than the internationally accepted price to minimise profits tax. The Japanese Tax Bureau claimed Yen 160 million in income tax not correctly reported, arising from tansfer pricing.

(2) Glaxo Settles US$3 Billion Tax Row

Reuters reported that the US Internal Revenue Service claimed back tax from Glaxo, after alleging it engaged in so called transfer pricing, a practice designed to minimise US taxable profits by overpaying foreign subsidiaries for drug supplies. It was settled out of court.

(3) Toyota ordered to pay 2B Yen in Tax

Toyota ordered to pay this amount for failing to report 6 Billion Yen of Income (source - Asashi Newspaper).

The Nagoya Regional Tax Bureau found Toyota sold car parts to overseas units at a price lower than the market rate to reduce taxable income. Toyota also booked advertising expenses and other costs improperly, the report said.

These are but three examples of widespread practice. In our industry (the liquor industry) Hong Kong is dominated by multi-national companies who transfer their brands by invoicing from one subsidiary in the production country to another in the overseas region and then possibly to a third associated company which distributes the brands locally.

We have circumstantial evidence that these brands are transferred below open market value. The cost of advertising and promotion are then built into the price structure locally, after the import duties are paid before the products are transferred to the end consumer, at as high a price as possible.

This is a sophisticated way of avoiding the worst effects of Customs Law, but also leads to unfair competion because independent parties can hardly compete with such practice.

Please acknowledge receipt of this email and let us know if you have questions.

Best regards,

Richard Paine
Fine Vintage (Far East) Ltd