We welcome the Government's initiative to consult the public about competition policy especially concerning legislation. For simplicity, we will set out to state our views on most of the questions posed in the consultation paper.

1. Does Hong Kong need a new competition law?

It has been the views of our organization for a long time that Hong Kong needs a new competition law.

2. Should any new competition law extend to all sectors of the economy, or should it only target a limited number of sectors, leaving the remaining sectors purely to administrative oversight?

In the past and present, telecommunications and broadcasting are the only two sectors in Hong Kong are regulated over competition matters. First, the singling out of these two sectors is not appropriate and fair. Second, as in many past examples in the telecommunications industry, possible anti-competitive behaviors cannot be probably handled by the sectoral regulatory approach, which has been proven to be ineffective in certain situation, e.g. cross-sectoral bundling. Therefore, we believe that any new competition law should be extended to all sectors of the economy.

3. Should the scope of any new competition law cover only specific types of anti-competitive conduct, or should it also include the regulation of market structures, including monopolies and mergers and acquisitions?

We believe that in addition to telecommunications and broadcasting, there are other sectors in which M&A activities will have substantial effects on market competition and domination. And we believe that it is beneficial to include in the new competition law provisions regulating M&A activities that are to come into effect at an appropriate time in future, with that timing to be determined by further review after the law initially comes into effect.

4. Should a new competition law define in details the specific types of anti-competitive conduct to be covered, or should it simply set out a general prohibition against anti-competitive conduct with examples of such conducts?

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5. Should a new competition law aim to address only the seven types of conduct identified by CPRC, or should additional types of conduct also be included, and should the legislation be supported by the issue of guidelines by the regulatory authority?

We believe that the approach stated in the consultation paper in part 76, that is, to set out a general prohibition against anti-competitive conduct and to supplement this with guidelines and regular commentaries, is a reasonable and flexible approach.

6. In determining whether a particular anti-competitive conduct constitutes an infringement of the competition law, should the "purpose" or "effect" of the conduct in question be taken into account? Or should such conduct on its own be regarded as sufficient in determining that an infringement has taken place?

We believe that it is proper to take into account the "purpose" and "effect" of the conduct in question, so as to protect SMEs and eliminate the probability that improper enforcement be taken.

7. Should any new competition law allow for exclusions or exemptions from the application of some or all aspects of the law, and if so, in what circumstances should such exemptions apply?

At the moment we do not find any instance that exclusions or exemptions may be called for. If undertakings are allowed to seek case-by-case exemptions from the regulatory agency, the criteria that the agency uses to make the decision must be made clear and transparent, or else this may impact on the perception of impartiality of the regulator.

8. Which would be the most suitable of the three principal options set out for a regulatory framework for the enforcement of any new competition law for Hong Kong?

Preliminarily we have found that different options may be most appropriate for different natures of cases. Further studies may be necessary to determine a best

option for enforcement.

9. Should the regulator be self-standing or should a two-tier structure be adopted, whereby a full-time executive is put under the supervision of a management board made up of individuals appointed from different sectors of the community?

We believe that a two-tier structure is appropriate to engage community involvement and support for the work of the regulator. It may however need to be clarified about the terms and powers held by the management board, whether it is more of an advisory role, which we prefer, or an executive or management function.

10. In order to help minimize trivial, frivolous or malicious complaints, should any new competition law provide that only the regulatory authority has the power to conduct formal investigations into possible anti-competitive conduct?

We agree with the view stated in parts 109 and 110 of the consultation paper that only the regulatory authority would be able to decide whether further action should be taken based on a complaint, and the new law should stipulate the threshold that would have to be met before the authority might decide to initiate a formal investigation. In addition, high-impact cases and cases involving significant public benefits should not be allowed to be settled by authority without oversight or approval by, for instance, the management board.

11. What formal powers of investigation should a regulatory authority have under any new competition law?

We agree with the proposed formal powers as in part 114 of the consultation paper.

12. Should failure to cooperate with formal investigations by the regulatory authority be a criminal offence?

We agree that such failure to cooperate should constitute a criminal offence.

13. How might a competition regulatory authority deal with the disclosure of information that comes to its knowledge having regard to the need to protect

various categories of confidential information on the one hand, and the need to make appropriate disclosure in order to take forward an investigation when the circumstances so require?

We believe that the new competition law should take this important issue of balance the need to protect confidential information on the one hand, and disclose certain information for investigation purpose. We hope that the Government will further consider this matter seriously to strike a balance between protecting those under investigation and the public interest.

14. Should the existing sector specific regulators that also have a competition role continue to play such a role if a cross-sector competition regulatory authority were to be established?

We believe that telecommunications and broadcasting should continue to be regulated by the relevant authorities at present time. But in the cases of cross-sector competition issues, the new regulatory authority will need to cooperate with the existing regulators, in similar approaches as those proposed in part 118 of the consultation paper.

15. Should breaches of any new competition law be considered civil or criminal infringements? What levels of penalty would be suitable?

We do not have a final decision on our view on this question.

16. Should any new competition law include a leniency programme?

We do not object to a leniency programme but we are somewhat concerned about how such programme can be properly administered so that it does not dilute the effectiveness of the regulator and the new competition law, and the application of the leniency programme is open and fair. In order to avoid such situations, we believe that some criteria should be cited beforehand to govern the use of the leniency programme, and possibly management board or some oversight approval should be obtained before applying such leniency.

17. Should any new competition regulator be empowered to issue orders to "cease and desist" from anti-competitive conduct?

We believe that this is one of the basic powers that a regulatory authority should possess.

18. As an alternative to formal proceedings, might any new competition regulator have the authority to reach a binding settlement with parties suspected of anti-competitive conduct?

We agree that the regulator should have such power.

19. Should any new competition law allow parties to make civil claims for damages arising from anti-competitive conduct by another party?

We believe civil claims for damages should be allowed.

20. How should any new competition law address the concerns that our businesses, especially our SMEs, may face an onerous legal burden as a result of such civil claims?

We agree with the general principles laid out in part 130 of the consultation paper.

We support the legislation for fair competition and we hope that the Government will move swiftly with the consultation exercise and legislation.

Hong Kong Information Technology Federation
Hong Kong Internet Service Providers Association
Internet Society Hong Kong
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About Hong Kong Information Technology Federation (HKITF)
Established in 1990, the Hong Kong Information Technology Federation is a

non-profit, non-political trade association that acts as a forum in which the IT-related businesses in Hong Kong can work together for the benefit of the industry and to maintain a high level of business practice amongst the members. Web: http://www.hkitf.org

About Hong Kong Internet Service Providers Association (HKISPA)
Established in 1996, the Hong Kong Internet Service Providers Association is the industry representative organization of Internet Service Providers in Hong Kong. HKISPA's missions include promoting Internet development and fair competition in Hong Kong. Web: http://www.hkispa.org.hk/

About Internet Society Hong Kong (ISOC HK)
Established in 2006, Internet Society Hong Kong is the regional chapter of Internet Society (ISOC), the global organization for Internet users, in the Hong Kong region, with a mission to promote and develop a high standard for online civil society, information freedom and privacy, and Internet governance. Web: http://www.isoc.hk