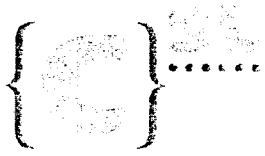

New World Mobility
The one for you

The submissions of Hong Kong CSL Limited and New World PCS Limited in response to the document entitled 'A public discussion document on the way forward for competition policy in Hong Kong, Promoting Competition – Maintaining our Economic Drive' released in November 2006 by the Economic Development Bureau

5 February 2007

Contents

1 Submission

1.1 Hong Kong CSL Limited and New World PCS Limited (the "**CSL & NWM Group**"), are pleased to provide comments in response to the consultation document on "Promoting Competition – Maintaining our Economic Drive" issued by the Economic Development and Labour Bureau of Hong Kong (**"Bureau"**) in November 2006 (**"Public Discussion Document"**).

1.2 The comments set out in this response represent CSL & NWM Group's initial views about a proposed general competition law. CSL & NWM Group would welcome the opportunity to participate in further consultation with a view to providing more detailed comments in relation to the proposed general competition law, as the policy is further developed.

2 Summary

2.1 In summary, the CSL & NWM Group strongly believes that a general competition law should be adopted in Hong Kong, provided that:

2.1.1 the law and the regulatory environment are properly formulated, in accordance with the principles set out in this submission; and

2.1.2 the existing sector competition regulation is abolished.

3 Key Question 1: Does Hong Kong need a new competition law?

3.1 The CSL & NWM Group believes that Hong Kong needs a general competition law.

3.2 The lack of legal framework which has resulted in the inability to effectively investigate, enforce or impose sanctions in respect of anti-competitive behaviour (outside of the

telecommunications and broadcasting sectors), is not desirable and has the potential to impair Hong Kong's economic efficiency.

3.3 The CSL & NWM Group considers that a properly formulated general competition law describing the types of behaviour constituting anti-competitive conduct would be advantageous for Hong Kong's economy. Further, a competition law that targets anti-competitive conduct, as opposed to the structure and size of the participant, would not disturb market structure.

4 Key Question 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 to purely administrative oversight?

4.1 Anti-competitive conduct can occur in any sector and therefore it is imperative that legal framework is in place to investigate and sanction that conduct.

4.2 While the consequences of applying a general competition law to particular conduct may vary across sectors (due to the particular characteristics of a given sector), it is important that the same legislative environment applies to all sectors. The promotion of a more favourable legislative environment in certain sectors could skew investment decisions and distort economic activity, leaving other sectors of the economy at a disadvantage.

4.3 It is therefore the view of the CSL & NWM Group that, in order to improve the business environment and attain the long term advantages that come with a competitive market, any competition law proposed by the government should be applicable to all sectors of the economy.

4.4 The CSL & NWM Group acknowledges that a degree of overlap with the existing sector competition regimes will be inevitable during the transition period, and considers that this is acceptable in the short term. However, it strongly notes that it would be inappropriate and highly undesirable to retain both regimes in the long term. (Please also see the discussion in section 16.2 below.)

5 Key Question 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?

5.1 It is imperative to the proper operation of any new competition law that it covers the generally accepted anti-competitive conduct types that are commonly found in the competition law frameworks of most other developed economies. This therefore includes restrictive agreements, abuse of market dominance, monopolies, and mergers and acquisitions.[1]

5.2 Failure to include each of these aspects in a general competition law would render that law incomplete and potentially ineffective in curbing undesirable economic activity. Making some forms of anticompetitive conduct unlawful but not others provides incentives for firms to cease any unlawful conduct but replace this with forms of anticompetitive conduct that are left lawful.[2] If so, the introduction of such a competition policy would not reduce the amount of anticompetitive conduct, it would just result in firms undertaking different forms of anticompetitive conduct.

5.3 Accordingly, CSL & NWM Group submits that all of these conduct types must be included in order to send a clear signal to the business sector that this conduct will not be tolerated.

6 Key Question 4: Should a new competition law define 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 conduct?

6.1 The general competition law must strike a balance between being couched in sufficiently broad terms while containing a necessary level of detail so as to avoid being open-ended and uncertain, and thereby potentially damaging competitive markets.

7 Key question 5: Should a new competition law aim to address only the seven types of conduct identified by the

[1] CSL & NWM Group notes that competition law in each of Australia, Canada and Singapore contain merger control regimes (contrary to the table set out on page 12 of the Public Discussion Document), as well as the United States, and considers it appropriate that a similar approach is adopted in Hong Kong.

[2] For instance, if mergers are not included, it is possible that companies could structure arrangements (such as via a merger) to circumvent new laws against anti-competitive cartel conduct or other prohibited practices.

CRC, or should additional types of conduct also be included, and should the legislation be supported by the issue of guidelines by the regulatory authority?

7.1 The new competition law should address the seven types of conduct identified by the CRC, however, as noted in section 6 above, it should be drafted sufficiently broadly to ensure that new market conditions can be taken into account when determining what constitutes anti-competitive conduct.

7.2 The provisions could be supplemented by guidelines issued by the regulator which may provide examples and descriptions of conduct that would be considered anti-competitive and also provide a guide as to how the regulator proposes to perform its function. It may also be useful for the guidelines to contain discussions of cases from both Hong Kong under the existing telecommunications and broadcasting competition regimes, and from overseas jurisdictions with similar legislation.

8 Key question 6: In determining whether a particular anti-competitive conduct constitutes an infringement of the competition law, should the 'purpose' and '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?

8.1 The CSL & NWM Group strongly believes that "per se" offences are inappropriate for a number of reasons. Competition regulation is designed to bring about competitive outcomes, and the simple prohibition of anti-competitive conduct does not necessarily serve this purpose. Rather, the involvement of the regulator should depend on the nature of the conduct, as the regulator's involvement without proper reason carries the risk of creating market distortions.

8.2 In addition, in complex matters such as trade practices regulation, there can be a reasonable probability of error by the regulator and the courts (and the cost of such error on industry and the economy can be large). Consequently, the CSL & NWM Group submits that threshold tests should apply for different types of anti-competitive conduct. These should be commensurate with the chance and potential cost of error. That is, where the chance and potential cost of error is high, it should be more difficult for parties to make successful (perhaps incorrect) and expensive claims against companies.

8.3 Accordingly, the CSL & NWM Group submits that a "purpose" and/or "effect" test, depending on the nature of the conduct, should be applied in determining whether a contravention has occurred. For instance, where the provisions relate to:

8.3.1 "structure" (such as mergers and acquisitions), an "effects" base test would be appropriate;

8.3.2 certain conduct (such as misuse of market power), a "purpose" based test should be sufficient; and

8.3.3 exclusive dealing and similar behaviour, a "purpose" *and* "effects" test would be appropriate.

8.4 For example, section 46 of the *Trade Practices Act 1974* (Cth) (**"Trade Practices Act"**) proscribe misuse of market power by corporations which have a "substantial" degree of power in a market. Note that it is not a breach of the section to have a large market share (or even a monopoly in the market), nor is it a breach to have market power. Rather, the essence of the prohibition is that corporations with a substantial degree of market power may not use that power for the *purpose* of substantially damaging or eliminating a competitor, or preventing or deterring anyone from engaging in competitive conduct in any market.

9 Key question 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?

9.1 The CSL & NWM Group does not consider that exemptions should be provided "as a right" to any sector and agrees that 'providing too many exclusions or exemptions, particularly at the early stage of introducing a new competition law, would likely dilute the effectiveness of such a law.[3]

9.2 It considers, however, that provision should be made to enable firms to seek exemptions on a case-by-case basis. By requiring a party to make an application for an exemption, the regulator may review the proposed conduct and determine, in accordance with defined principles (such as whether the public benefit would outweigh the possible harm

[3] Consultation Paper, p. 35.

that might result from a lessening of competition), whether to allow the proposed conduct.

9.3 The CSL & NWM Group suggests that the Bureau be guided by the relevant models in the Trade Practices Act and the *Competition Act 1998* (UK). The key features of the Australian model are discussed below.

9.4 The Trade Practices Act contains two separate administrative processes enabling a firm to obtain "immunity" from conduct that would otherwise contravene the competition prohibitions:

9.4.1 "Authorisation" is available in respect of conduct that would otherwise contravene any competition prohibition under the Trade Practices Act (including the mergers and acquisitions prohibition), except exclusive dealing. A firm can file an authorisation application with the ACCC which then undertakes a very thorough (and often lengthy) process of public inquiry into the public benefits and anti-competitive detriments of the proposed conduct. If the public benefits outweigh the anti-competitive detriments, the ACCC may "authorise" the conduct (and "immunity" applies on the granting of the authorisation).

9.4.2 "Notification" is available in respect of conduct that would otherwise contravene the exclusive dealing provisions of the Trade Practices Act. A firm can "notify" the ACCC of proposed exclusive dealing conduct and a similar public benefit test applies. Unlike authorisations, however, immunity applies immediately on the date on which the notification was lodged and remains in force unless the ACCC determines that the anti-competitive detriments of the proposed conduct outweigh the public benefits.

10 Key question 8: Which would be the most suitable of the three options set out in Chapter 4 for a regulatory framework for the enforcement of any new competition law for Hong Kong?

10.1 The CSL & NWM Group regards the separation of enforcement and adjudication as a necessity, and accordingly, prefers option 2.

10.2 This model is used in both Australia and the United States. In Australia, the ACCC is the national statutory authority responsible for ensuring compliance with and enforcement of the Trade Practices Act. It has the reputation of being one of the most

vigilant competition law enforcement authorities in the world and vigorously defends consumer interests in enforcing the Trade Practices Act. It has significant resources to investigate and litigate matters but cannot itself (unlike the ECDGC in Europe) impose penalties or sanctions. Penalties and other sanctions must be imposed by the Federal Court of Australia.

10.3 The CSL & NWM Group considers that the existing courts of Hong Kong are well equipped to deal with competition law issues in the event that Option 2 is favoured. Accordingly, from a logistical perspective, the implementation of a new competition law will be a simpler task given that there is a long standing tradition of the rule of law and the expertise of the judiciary in Hong Kong, to be drawn upon.

10.4 The CSL & NWM Group notes that if adjudication by a specialist tribunal is preferred by the Bureau, special regard should be had to its evidentiary procedures.

11 Key question 9: Regardless of the option you prefer, 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?

11.1 The CSL & NWM Group submits that a "two-tier" structure for the regulatory authority, similar to that of the BA, is desirable.

11.2 The regulatory authority should comprise a governing board (with members representing different interest groups, including business, professional, consumer and government) and an executive arm to be staffed by individuals with expertise in law, economics and accounting. Further details of this "two-tier" structure, in particular, the composition of the Board and the details in relation to the Chairperson, are set out in paragraphs 11.3 to 11.12 below. A key focus should be on ensuring the independence and accountability of the regulatory authority.

11.3 **Board:** The CSL & NWM Group believes that the board of any competition regulator should be composed of:

11.3.1 an Executive Chairperson who is also the Director General of an executive department[4] (a full time employee of the regulator);

11.3.2 two executive 'directors' (also both full time regulator employees); and

11.3.3 four independent non-executive directors (who receive nominal remuneration).

11.4 **Chairperson:** In relation to the position of Chairperson, in summary, the CSL & NWM Group believes that:

11.4.1 the Chairperson of the regulator must be a strong and effective leader who has extensive regional commercial and economic experience and knowledge;

11.4.2 a part-time Chairperson would not be sufficiently versed in the increasingly complex issues facing the economy; and

11.4.3 the creation of the position as part-time risks a titular appointment being made.

11.5 Following these recommendations would allow for a Chairperson who is focused on the initiatives, problems and issues facing the economy and by virtue of fulfilling these criteria would have the confidence and respect of the community.

11.6 The executive nature of the role of Chairperson allows the Chairperson to be involved fully in operational issues of the regulator and to become conversant with its operational affairs. To make the public face of the regulator 'part time' and in any way removed from the day to day affairs (and more importantly enforcement and regulatory action) of the regulator is to risk that person being seen purely as a figurehead appointment or spokesperson.

11.7 The model of having an executive Chairperson has worked very successfully in other jurisdictions. For instance, in Australia (where, as noted above, the regulator has a very successful track record), the Chairperson of the ACCC[5] is a much respected regulator. The ACCC Chairperson is an executive and is also a very public figure and features prominently in Australian business life. It is also

[4] Analogous to a Chief Executive Officer.

[5] Currently Mr. Graeme Samuel.

well known that the Chairperson of the ACCC is capable of putting into effect any public statement that he may make regarding regulatory activity.

11.8 Further, a non-executive Chairperson, not being involved on a full time basis in the complex operational affairs of the regulator, could not hope to adequately represent the regulator to the industry and public. Such a deficiency has the potential to decrease the respect for the regulator and hence its ability to perform its stated aims.

11.9 An executive Chairperson is less likely to be a political appointment as it would be difficult for such an appointee to properly perform this demanding role if he or she is not properly qualified. Making the Chairperson an executive would effectively mandate the selection of a properly qualified candidate which of course could only serve to enhance the effectiveness of the regulator.

11.10 In addition to being a full-time executive, the Chairperson should also be properly remunerated in accordance with normal market principles. In order to ensure proper independence and integrity the Chairperson must also be made to:

11.10.1 disclose all of his or her financial interests;

11.10.2 resign from all other public and private offices and posts; and

11.10.3 refrain from dealing with regulatory matters in which he or she might have a real or perceived conflict of interest.[6]

11.11 Having a single person as the Chairperson of the regulator who is also the Director-General should provide for a stronger leadership base. It will also do away with the need for an added level of bureaucracy that would be necessary if the role was split (which would make the regulator more unruly, cumbersome and less able to react in a decisive and timely manner to industry challenges).

11.12 Additionally, the appointed executive Chairperson must be as independent from government as is possible.

[6] It is for this reason that consideration must also be given to creating the role of Deputy Chairperson who can assume the responsibilities of the Chairperson if he or she must recuse him or herself due to a conflict of interest.

12 Key question 10: In order to help minimise 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?

12.1 The CSL & NWM Group submits that only a regulator should have the power to investigate alleged breaches of the competition law.

13 Key question 11: What formal powers of investigation should a regulatory authority have under any new competition law?

13.1 The powers afforded the regulator should be sufficient to both investigate and enforce the new competition law, as well as serving as a deterrent to breaches of the competition law in their own right.

13.2 Section 155 of the Trade Practices Act (reproduced as Annexure A to this submission) provides a good basis from which to work when deciding which powers should be afforded to the regulator in the investigation of any activity under the new competition law. This section sets out the primary compulsory evidence gathering powers of the ACCC. Section 155(1) gives the ACCC power to compel the provision of information or documents or the appearance of witnesses to give evidence. Note that the ACCC cannot force a party to produce material protected by legal professional privilege (that is, documents created for the purpose of providing legal advice).

13.3 On a practical level, given the expense and time involved in complying with such broad investigatory power (and its potential for abuse), it will be essential to ensure that adequate checks and thresholds are incorporated into the exercise of this power, including an ability to seek judicial review.

14 Key question 12: Should failure to co-operate with formal investigations by the regulator authority be made a criminal offence?

14.1 The answer to this question depends on the type of conduct or breach that is being investigated. Failure to cooperate with investigations into a potentially serious breach should amount to a criminal offence; however, more minor contraventions should not.

14.2 The CSL & NWM Group notes that, in Australia, a person who fails to assist an officer, or fails to comply with a section 155 notice, or who provides false or misleading evidence, is guilty of an offence. Such an offence is punishable by fine and/or imprisonment.

15 Key question 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?

15.1 It would follow that the information or documents provided in the course of formal investigations should be able to be used for the purpose for which they were sought; that purpose normally being to assist the regulator in investigating a possible breach of the law and to determine whether a breach has occurred.

15.2 The CSL & NWM Group notes that there is no express obligation of confidentiality on the ACCC with respect to information obtained under section 155. However, the ACCC generally respects the confidentiality of documents and avoids disclosure to third parties where possible.

15.3 This issue could be explicitly addressed in either the general competition law itself, or in the accompanying guidelines. The CSL & NWM Group suggests that the ACCC's approach, noted above, would be appropriate.

16 Key question 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?

16.1 The existing sector specific regulators (such as the TA), should not continue to have a competition law function following the implementation of a general competition law. Accordingly, the existing powers held by the sector specific regulators should be abolished and transferred to the new regulatory authority.

16.2 In order to ensure a smooth transition between the two regimes, it may be necessary to have a window of overlap while the old regimes are phased out over time in order to

allow those affected by the competition laws (both existing and proposed) to adjust to the change in regulatory regime. (Please also see section 4.4 above.)

17 Key question 15: Should breaches of any new competition law be considered civil or criminal infringements? What level of penalty would be suitable?

17.1 In answering this question it is important that any penalty regime be measured and effective. The most appropriate way to establish such a regime is to work from the principle that the punishment must fit the contravention and also act as a sufficient deterrent to members of the community in order to discourage breaches of the competition law.

17.2 That said, the CSL & NWM Group generally considers it appropriate for civil sanctions to apply in respect of most competition contraventions. However, in certain circumstances, it may be appropriate for criminal sanctions to apply.

17.3 For example, in Australia, while most contraventions of the Trade Practices Act attract civil sanctions (the ACCC can seek pecuniary penalties, injunctions and compensation orders), Australia is in the process of introducing criminal sanctions (such as significant fines and/or imprisonment) for serious cartel conduct. A similar regime exists in the United States.

18 Key question 16: Should any new competition law include a leniency programme?

18.1 Most advanced legislative systems contain a mechanism under which leniency can be applied where the circumstances merit such action. The CSL & NWM Group considers that the ability to apply leniency can be a useful regulatory tool, provided that it is clear and it takes into account similar arrangements in other jurisdictions (particularly given that conduct attracting such policies often extend beyond national borders).

18.2 In Australia, the ACCC has a formal immunity policy for cartel conduct.[7] This policy enables a corporation to apply for immunity where it meets the prescribed conditions. For instance, immunity from prosecution is available for a cartel participant if it is not

[7] A copy of the policy can be found at www.accc.gov.au/cartels.

the "ring leader" of the cartel, but is the first to disclose the existence of the cartel and fully cooperates with the ACCC throughout its investigation.

19 Key question 17: Should any new competition regulator be empowered to issue orders to 'cease and desist' from anti-competitive conduct?

19.1 The power to issue cease and desist orders should only be issued, without prior warning to the relevant party, in extreme circumstances. In such situations, it is essential that the relevant party has a right of judicial review (and the regulator should be held accountable for any damages arising from such orders being improperly issued).

20 Key question 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?

20.1 The CSL & NWM Group believes that it is appropriate that the regulator have the power to enter into an agreement with parties to settle or avoid proceedings for an alleged breach of competition laws.

20.2 The decision whether to enter into a "settlement" should be a matter for the regulator, and the courts should not be involved. The regulator should retain the right to institute proceedings against a firm in certain circumstances (such as where the basis on which the agreement was reached proves false). It may be appropriate for the guidelines to provide further details of this process. It will also be necessary to consider whether disclosure of such arrangements should be required.

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

21.1 The CSL & NWM Group believes that the competition law should most definitely allow parties to claim for damages arising from anti-competitive conduct.

21.2 This is consistent with the competition law's primary objective (which of course is to discourage anti-competitive conduct), in that the ability of a party to be able to bring proceedings against another party for breaches of the competition law can act as a deterrent to inappropriate conduct. It can also go some way towards restoring the

aggrieved party to the position that they should have been in but for the transgressing anti-competitive conduct of the other party.

22 Key question 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?

22.1 The competition provisions should apply to all firms, irrespective of their size and commercial ability to comply with the law. If a modified rule were to apply to SMEs, there is a risk that companies could construct their affairs to avoid having to comply with competition provisions.

22.2 In any event, international experience indicates that SMEs tend to benefit from the introduction of such provisions, as they often the ones bringing the actions against larger firms.

23 Interpretation

ACCC means the Australian Competition and Consumer Commission.

ECDGC means the European Commission – Directorate General for Competition

Hong Kong means the Hong Kong Special Administrative Region of the People' Republic of China.

MNO means a Mobile Network Operator.

MNO Licensee means an MNO which holds a licence to provide public mobile telecommunications services within Hong Kong.

OFTA means the Office of the Telecommunications Authority.

Ordinance means the Telecommunications Ordinance Cap. 106 of Hong Kong

TA means the Telecommunications Authority.

24 Confidentiality

The CSL & NWM Group does not regard any part of this submission as confidential and has no objection to it being published or disclosed to third parties, however, this submission in its entirety is made on the basis that it is **without prejudice** to the rights of CSL & NWM Group and its associated corporate entities.

-END-

25 Annexure A

TRADE PRACTICES ACT 1974 - SECT 155

Power to obtain information, documents and evidence

(1) Subject to subsection (2A), if the Commission, the Chairperson or the Deputy Chairperson has reason to believe that a person is capable of furnishing information, producing documents or giving evidence relating to a matter that constitutes, or may constitute, a contravention of this Act, or is relevant to a designated telecommunications matter (as defined by subsection (9)) or is relevant to the making of a decision by the Commission under subsection 91B(4), 91C(4), 93(3) or (3A) or 93AC(1) or (2) or 95AS(7) or the making of an application under subsection 95AZM(6), a member of the Commission may, by notice in writing served on that person, require that person:

(a) to furnish to the Commission, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any such information;

(b) to produce to the Commission, or to a person specified in the notice acting on its behalf, in accordance with the notice, any such documents; or

(c) to appear before the Commission, or before a member of the staff assisting the Commission who is an SES employee or an acting SES employee and who is specified in the notice, at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

(2A) A member of the Commission may not give a notice under subsection (1) merely because:

(a) a person has refused or failed to comply with a notice under subsection 95ZK(1) or (2) on the ground that complying with the notice would tend to incriminate the person, or to expose the person to a penalty; or

(b) a person has refused or failed to answer a question that the person was required to answer by the person presiding at an inquiry under Part VIIA, on the ground that the answer would tend to incriminate the person, or to expose the person to a penalty; or

(c) a person has refused or failed to produce a document referred to in a summons under subsection 95S(3), on the ground that production of the document would tend to incriminate the person, or to expose the person to a penalty.

(3) If a notice under subsection (1) requires a person to appear before the Commission to give evidence, the Commission may require the evidence to be given on oath or affirmation. For that purpose, any member of the Commission may administer an oath or affirmation.

(3A) If a notice under subsection (1) requires a person to appear before a member of the staff assisting the Commission to give evidence, the staff member may require the evidence to be given on oath or affirmation and may administer an oath or affirmation.

(5) A person shall not:

(a) refuse or fail to comply with a notice under this section;

(b) in purported compliance with such a notice, knowingly furnish information or give evidence that is false or misleading.

(5A) Paragraph (5)(a) does not apply to the extent that the person is not capable of complying with the notice.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5A), see subsection 13.3(3) of the *Criminal Code* .

(6A) A person who contravenes subsection (5) is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units or imprisonment for 12 months.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

(7) A person is not excused from furnishing information or producing a document in pursuance of this section on the ground that the information or document may tend to incriminate the person, but the answer by a person to any question asked in a notice under this section or the furnishing by a person of any information in pursuance of such a notice, or any document produced in pursuance of such a notice, is not admissible in evidence against the person:

(a) in the case of a person not being a body corporate--in any criminal proceedings other than proceedings under this section; or

(b) in the case of a body corporate--in any criminal proceedings other than proceedings under this Act.

(7A) This section does not require a person:

(a) to give information or evidence that would disclose the contents of a document prepared for the purposes of a meeting of the Cabinet of a State or Territory; or

(b) to produce a document prepared for the purposes of a meeting of the Cabinet of a State or Territory; or

(c) to give information or evidence, or to produce a document, that would disclose the deliberations of the Cabinet of a State or Territory.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7A), see subsection 13.3(3) of the *Criminal Code* .

(7B) This section does not require a person to produce a document that would disclose information that is the subject of legal professional privilege.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

(8) Nothing in this section implies that notices may not be served under this section and section 155A in relation to the same conduct.

(9) A reference in this section to a ***designated telecommunications matter*** is a reference to the performance of a function, or the exercise of a **power**, conferred on the Commission by or under:

(a) the *Telecommunications Act 1997* ; or

(b) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* ; or

(c) Part XIB or XIC of this Act.

(10) In this section: