



January 18, 2007

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

By Post

Dear Sirs

**Public Consultation on the Way Forward for
Hong Kong's Competition Policy**

We thank you for inviting the Chamber of Hong Kong Listed Companies to respond to the consultation on the way forward for competition policy in Hong Kong. The Chamber has 146 members, all of them Hong Kong-listed companies and companies related to the financial markets, and represent a wide cross-section of Hong Kong's economy.

We are delighted to have the opportunity to express our views on this very important subject. Our competition policy not only affects the business but also has a significant impact on the daily life of every Hong Kong citizen as consumers of products and services.

We commend the Competition Policy Review Committee for coming up with a detailed consultation listing out 20 questions about the subject. Our response focuses on the fundamental question of whether we need a new competition law and, if so, what kind.

Our Basic Stance: In Support of Free Economy

In considering the question should Hong Kong require a new competition law, we first and foremost remind ourselves of our firm belief in free economy. We are firmly of the view that free play of the market is one of the pillars of success of Hong Kong, and as such we welcome competition. We see competition as a driving force for companies and product and service providers to continually improve their offerings, lower costs, enhance efficiency, and by having new competitors entering the market would shake market leaders out of their complacency.

The Question of Legislation

However, we do not believe legislation is the right approach to ensure competition in all circumstances. In fact, there is the danger of getting caught in the fallacy of authority believing that law provides all the answers. For the very reason of our support of free economy, we believe market forces are sometimes more effective in

leading to free competition. As a prominent Hong Kong banker pointed out recently, competition in the banking sector was a result *not* of competition laws but forces within the banking industry. If we may, we would like to make reference to his comments to illustrate our point.

The banker said that contrary to what is stated in the Government's discussion paper on competition policy, competition in the banking sector did not come from the scrapping of the interest rate rules in the year 2001 but through infrastructure reforms within the banking industry over a period of two decades. The abolition of the interest rate rules in 2001, he said, had only a very minor impact on the market. He argued that competition was more of a consequence of a series of reforms and changes from within the industry, including the introduction of an independent clearing house, establishment of a lender of last resort and the setting up of the Commercial Credit Reference Agency, but not something a competition review board could ever impose from above. His points suggested that a cross-sector legislation and competition authority would lack the industry experience and foresight to instigate such changes, rendering it ineffective to fulfill the role it was set up to fulfill.

Our Recommendations

The Chamber shares this view and our position is we do not support an omnipresent legislation. Our rationale are further elaborated below:

- 1) We do not see widespread anti-competitive behaviour across all sectors and industries in Hong Kong, therefore we do not see the need to put in place an omnipresent anti-competitive legislation.
- 2) The downside of having an across-the-board legislation, the law itself will have a tendency to be all-encompassing in order to cover the whole spectrum of the businesses but this will err on being too general. Consequently, the law will not be detailed enough to take account of the special situation and characteristics of individual industries that need to be regulated.
- 3) An one-for-all legislation will increase the compliance costs, such as professional advisory fee and potential legal costs, of the society as a whole including those sectors that are not found to be anti-competitive or are not prone to be so. Companies even with no intention to engage in anti-competitive behaviour, would need to evaluate every normal competitive business activity to make sure they would not fall into the grey areas of the law. As a result, both monetary and time costs will increase. This will be unfair to those companies and further add to the rising costs of doing business in Hong Kong, which will eventually affect the competitiveness of our economy as a whole.
- 4) To introduce another piece of legislation that cuts across all economy runs the risk of the Government involving too much in the operation of the business, which goes against the principle of "small government, large market". The existence of an omnipresent legislation has an overhang effect on all businesses, causing them to be overly cautious in conducting business to avoid infringing the law. This might result in an obstruction of normal business activities, delay in reaction to changes in market circumstances and lengthening unnecessarily the time-to-market for

products and services, which are all counter-productive to a free economy. In addition, the Government needs to be mindful that any legislation must not be used as a shelter by uncompetitive companies to seek refuge from their more competitive counterparts. Any legislation that serves to protect the uncompetitive would only disincentivise able players and result in misuse of economic resources and cause market inefficiency, which again contradicts the government's belief in a free play economy.

- 5) If the Government must introduce a legislation, we urge the Government to introduce it only to those sectors where anti-competitive activities are rampant and proven. Any legislation are to be meticulously drafted catered for the found anti-competitive activities as well as the business reality and particularities and consumers interests of the sector concerned, which makes for effective implementation as well as compliance.

In conclusion, we are of the view that Hong Kong does not need an omnipresent competition law. And any anti-competitive legislation should only be introduced on an as-needed and warranted basis i.e. to sectors where business activities show evidence of being anti-competitive or where there is a have high propensity to be so.

Regulatory Framework

In the situation where the Government finds it absolutely justifiable to introduce a legislation for a particular sector, it has to make sure a streamlined and well-defined regulatory framework be created to minimize the use of public resources and to keep the financial burden to the business sector to the minimum. The latter is most important, especially to the small and medium enterprises, where the general business and compliance costs are already high. The investigation and hearing procedures must also be expediently done.

In view of the these considerations, we support option 3 proposed in your discussion paper where it says a regulatory body with enforcement power would be created to hear complaints of anti-competitive behaviour; and suspected cases would be brought to a specialist tribunal for judgment and sanctions. We feel that this option separates investigation and adjudications and ensure a fair degree of proper check-and-balance. The tribunal system would also minimize the burden to our courts, which are already overloaded, and could speed up the whole adjudication process.

An important point is that though we prefer a tribunal approach, we believe the burden of proof should rest with the party raising the complaint and the regulatory body, in line with the spirit of the common law. There should also be a time limit for the cases to be heard and concluded, and we recommend this to be three years. In addition, should the complaint cannot stand and the alleged anti-competitive behaviour cannot be established in the end, we feel strongly that there should be a mechanism to compensate the defending party for the time lost and costs involved in defending itself. Besides being a fair arrangement, a compensation mechanism will deter unfounded allegations, thus minimizing wastage of public and private resources alike.

The above are our views towards the fundamental question of whether Hong Kong



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needs an omnipresent legislation. We are pleased to be submitting our views and we certainly hope the Government would take them into account when further deliberating the issue. The Chamber would be pleased to have further opportunities to work together with the Government in developing a workable competition policy for Hong Kong.

Yours faithfully
For and on behalf of
The Chamber of Hong Kong Listed Companies

A handwritten signature in black ink, appearing to be 'Thomas Wu', written in a cursive style.

Thomas Wu
Vice-Chairman