



香港建造商會

The Hong Kong Construction Association Ltd

A member of International Federation Of Asian And Western Pacific Contractors' Associations

29 January 2007

Our Ref:  0200006881

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

By Fax and Post
2868 4679

Dear Sir

"Promoting Competition – Maintaining our Economic Drive"

We refer to the above titled public discussion document on the way forward for competition policy in Hong Kong.

The Hong Kong Construction Association Limited ("HKCA") is an organisation formed in 1930 to represent the interests of its members. The members of HKCA, currently numbering over 320, are construction companies, both large and small, involved in the Hong Kong construction industry.

HKCA has a number of functions. It represents its members and acts as the channel of communication with the Government and community. It carries out an advisory function for its members on all aspects of the industry. HKCA carries also a function for information sharing among the members which actually has pro-competition benefits. It also has a charitable function, sponsoring a number of worthy causes relating to the construction industry.

Of particular relevance to the topic of competition as outlined in your discussion document, HKCA occasionally acts in a type of collective bargaining position on behalf of its members. As one of its major objectives, HKCA is to promote fair and equitable forms of contract. As part of this objective, HKCA is sometimes asked to represent contractors, in a general sense, on negotiating standard forms of contract for both public and private bodies. For example, HKCA has a number of representatives on a Conditions of Contracts Committee organised by ETWB. That Committee considers Conditions of Contract for public works contracts which is in line with the recommendations of the report of the Construction Industry Review Committee, "Construct for Excellence" for equitable allocation of risk and equitable contracting arrangements. HKCA represents, in a collective way, its members on that Committee.

Occasionally, HKCA is asked to advise members on particular contracts where an Employer may be considered to be adopting an inequitable position on the terms of contract. In some cases, HKCA may advise its members to jointly insist on qualifications to the terms of contract so as to provide an equitable form of contract.



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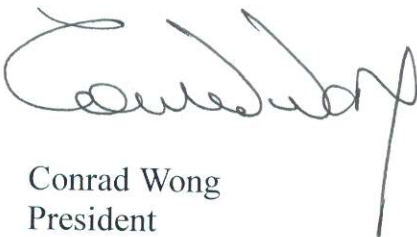
This is not intended in any way to be anti-competitive, quite the opposite.

In extreme situations, HKCA may advise its members in a particular contract, to refrain from tendering because the Employer is refusing to consider changes to some extremely onerous and/or inequitable terms of contract. Again, the advice HKCA gives and which is followed by its members after they have made up their own minds on the basis of all the information available to them, is in no way intended to be anti-competitive but is considered necessary to arrive at an equitable forms of contract.

HKCA believes that the introduction of legislation of the type referred to in your discussion document could give rise to concerns about the types of activities by our members referred to above. Those activities, however, are not intended to be anti-competitive and indeed have not in any way proved to be anti-competitive. We consider therefore that the legislation, if it is to be enacted, should be drafted such that this type of conduct does not fall foul of the legislation. This should be done with a specific exemption for HKCA and similar bodies but we consider that it would also be necessary for any conduct to be subject to a test of "purpose" or "intent", as outlined in your discussion document.

HKCA is committed to the future economic development of Hong Kong and is not against any legislation which is going to assist that economic development. We hope therefore that you understand our concerns and take them into account. We would be pleased to meet with you to explain our concerns if this would be of assistance to you. We request also that HKCA's views and opinions be consulted, considered and taken on board in the process of drafting the future legislation.

Yours sincerely



Conrad Wong
President

