Consultation on the Proposed Competition Law

The Federation of Hong Kong Industries is appreciative of the Government for launching the present consultation on the proposed competition law, which is useful for the public and the business community to dissect this important legislation and to assess its implications for Hong Kong’s competition regime.

Preamble

The FHKI is a staunch supporter of fair competition. In our previous submissions on the issue, we have repeatedly emphasised the importance of maintaining a level playing field in Hong Kong in that it is a cornerstone of our economic success. Ranked by the Heritage Foundation as the freest economy in the world for 14 years straight, Hong Kong is renowned for its barrier-free market where companies of any origin can compete freely and fairly. In fact, Hong Kong’s successful experience indicates that minimum government intervention in the market is most effective in promoting entrepreneurship as well as economic dynamism and growth.

Having thoroughly studied the proposed competition law set out in the consultation document, we find that the Government has striven to allay our previous concerns about the potential adverse effects of a cross-sector competition law on SMEs. Given the many safeguards provided in the proposed law to protect SMEs from vexatious and malicious anti-competitive litigations, we do not oppose its introduction to give the Government legal powers to investigate and sanction anti-competitive business practices should this become necessary.

Views on the proposed law

On the whole, we find the design and scope of the proposed law acceptable. The specific provisions on the institutional arrangements, conduct rules and private action look in order to us. According to the consultation document, the Competition Commission would be the principal enforcement authority of the proposed law, responsible for both investigation and adjudication. However, since every economic sector has its own peculiarities and market intricacies, determining whether a business practice is anti-competitive is highly complex, requiring expert knowledge of business operations and first-hand experience in the market. In view of this, we recommend that:
the law should provide that each of the four local leading trade associations may nominate a member to sit on the Board of the Competition Commission, so as to ensure it will have sufficient members who are knowledgeable about business operations and market intricacies (the authority to appoint these members shall be vested in the Chief Executive and they should serve on the Board in their personal capacity); and

- the Board of the Competition Commission be empowered to appoint expert groups to provide expert opinions on business practices peculiar to specific industries that are material to cases being investigated or adjudicated.

We also suggest that as checks and balances, the Competition Commission be subjected to audit by the Audit Commission.

Exclusions and exemptions

Since regulation of competition matters on a cross-sector basis is completely new to Hong Kong, it is advisable for the Government to take a minimalist approach at the initial stage to ensure its orderly implementation and to reduce the burden on companies in compliance. Accordingly, we agree that at the start, the law should not cover mergers and acquisitions, and that the conduct rule should not apply to the Government or statutory bodies.

It is mentioned in the consultation document that there would be a review of the law after its implementation. The Government may consider whether mergers and acquisitions should be included in the control and whether the Government and statutory bodies should remain exempted during the review in light of the actual experience gained.

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