

Draft Guidelines under the Competition Ordinance - 2014
Submission received from Construction Industry Council

《競爭條例》草擬指引— 2014
由建造業議會提交的意見書

Dear Sir/Madam,

I am submitting the following comments on behalf of the Construction Industry Council:

General

We welcome the issue of guidelines by the Competition Commission and the Communications Authority jointly for public comments. The Construction Industry Council(CIC) supports the aim of the Competition Commission to build up a fair competitive environment for doing business in Hong Kong. We suggest that industry specific guidelines on controversial practices could be drafted to guide the relevant industry stakeholders on proper behavior and practices. We gather from the global cases on competition law that the construction industry in overseas countries may be involved in breaches of the competition law. Against this background, we suggest the following:

- (a) more concrete definitions on terms like "prevent/restrict/distort competition" "pricing" etc could be formulated;
- (b) the guidelines could provide examples of agreements and activities in the context of the construction industry that may infringe the law, e.g. what kind of discussion re tender bidding e.g. actual price, payment terms, percentage of retention, etc would involve infringement? ;
- (c) Given the multiple tasks involved in a construction project, it would be difficult to determine which construction companies were indeed having a substantial degree of market power;
- (d) the Competition Commission should consider allocating resources to train up local experts in competition law for various sectors and especially to facilitate SMEs to comply with the law

For the first part, our comments on the Investigations and Applications(Exclusions and Exemptions) Section are as follows:

Investigations:

(P.17-19 of the Guidelines on Investigations) More specific guidelines on when parties are allowed to propose a Commitment, when will the Commission issue a warning notice, and when will the Commission issue an infringement notice will be helpful.

Applications for a Decision under Sections 9 and 24(Exclusions and Exemptions) and Section 15 Block Exemption Orders- 2014

The Ordinance provides for the following general exclusions from the Conduct Rules listed under Schedule 1(Section 2.1 on P.3 of 27 of the Guidelines on Applications)

- (i) Agreements enhancing overall economic efficiency;
- (ii) compliance with legal requirements;
- (iii) services of general economic interest;
- (iv) mergers;
- (v) agreements of lesser significance;
- (vi) conduct of lesser significance

On (i) Agreements enhancing overall economic efficiency: should other benefits in the cultural, social, public health and educational fields be included as enhancing overall economic efficiency as well? e.g. Vertical agreements between suppliers and subcontractors on the supply of green/environmentally friendly materials would benefit the community in the macro sense and from an environmental and public health point of view. With this as an example, should vertical agreements in the construction industry context be considered for exemption?

We shall submit more comments before the next deadline of 10 December 2014 on the other parts of the Guidelines.

Thanks you for your attention.