

Draft Guidelines under the Competition Ordinance - 2014
Submission received from AIA Group

《競爭條例》草擬指引— 2014
由 AIA Group 提交的意見書

Re: Draft Guideline on Complaints, Draft Guideline on Investigations and Draft Guideline on Applications (Exclusions and Exemptions)

These comments are made to the Competition Commission and the Communications Authority (“the Commission”) in relation to the:

- Draft Guideline on Complaints;
- Draft Guideline on Investigations; and
- Draft Guideline on Applications (Exclusions and Exemptions).

These comments are made by AIA Company Limited on behalf of the AIA Group, which includes businesses conducted in Hong Kong.

AIA appreciates the opportunity to comment on the draft Guidelines. Further comments will be made in respect of the draft Guidelines on the other Guidelines in due course.

Status of the Guidelines

Understanding that the Guidelines are not law, AIA considers that it would be appropriate for the Commission to declare that, except as may be necessary to conform to any binding case or judgment, the Commission will itself adhere to its Guidelines and that in any case where the Commission departs from the Guidelines that it would consider itself obligated to explain the basis for the departure.

Content of the Guidelines

AIA would suggest that in the interests of greater business certainty, to more closely align the Guidelines with international best practice and to increase the prospects of smoother legislative vetting of the Guidelines, that the Guidelines could have more detail and a greater clarity of commitment from the Commission in relation to:

- the bases on which the Commission would determine to proceed from preliminary review to initial assessment, and from initial assessment to investigation of complaints;
- the criteria to be applied in selecting between a voluntary request for

- information and exercising the Commission's powers of compulsion; and
- the criteria to be used by the Commission in selecting between enforcement options.

AIA would also urge the Commission to reconsider the position in the draft Guideline on Applications (Exclusions and Exemptions) at paragraph 6.5 where the Commission states that it will generally only consider Applications which fulfil the Suitability Factors. While it is understandable that the Ordinance sets a fairly high standard for applications which the Commission is required to consider, it appears unduly restrictive if compliance with all the Suitability Factors should be the minimum standard for applications generally. The requirement for novelty and for the onus of adequacy of information, for example, could be relaxed in that context.

Interpretation of legal power and authority

AIA would respectfully suggest that during the course of the vetting of the draft Guidelines by the Legislative Council, the Commission might appropriately request assessment as to whether the draft Guidelines align with the intention of legislators and then affirm or modify the Guidelines based on the result of such assessment, in respect of the following matters:

- Whether it was intended that an applicant or other provider of information to the Commission must be required to request and justify confidentiality in respect of its information, to be approved or allowed by the Commission, rather than the presumption of confidentiality arising and the Commission having constrained powers to disclose such information, or to use information in any other context than the direct exercise of the Commission's stated power; and
- Whether an applicant for a block exemption must necessarily be representative of industry and whether a public benefit test is necessary or appropriate as a condition for the Commission proceeding with a block exemption.