

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,

Following my submission of comments for the first part of the Guidelines on the Investigations and Applications (Exclusions and Exemptions) Section on 10 November 2014, I would like to submit further comments on the First Conduct Rule and Second Conduct Rule Section on behalf of the Construction Industry Council as follows:

First Conduct Rule:

(i) Joint Buying (P.27-28 of the Guidelines on First Conduct Rule) The major purpose of joint purchase is to take advantage of bulk-purchase in order to increase competitiveness, which directly enables the SMEs to compete with large enterprises.

- Are joint purchases by contractors/subcontractors with an aim to get a lower price allowed under the competition ordinance?

(ii) Exchange of Information (P.29-31 of the Guidelines of First Conduct Rule)

Industry associations/unions of construction industry may perform advisory function and share information to their members on all aspects of the industry aiming to create a pro-competitive atmosphere, for example:

- sharing of integrated and historical pricing information;
- sharing of statistics and data relating to labour and materials for performing business analysis and/or pricing tenders;
- sharing of non-price information, e.g. technological innovation, design standards to improve overall construction quality, technical standards to improve work safety, etc. for setting of technical or design standards;
- announcing suggested wages for construction workers;
- guiding members on remuneration matters;
- bench marking of fee scales of services;
- acting in a collective bargaining position to discuss/negotiate with developers/government on behalf of their members on unreasonable/stringent terms and conditions of a tender;
- promulgation of standard form contracts;
- disclosure of “qualified” suppliers’ list, etc.

It would be helpful for the Competition Commission to provide guidance to industry associations/unions and stakeholders on permissible and non-permissible conduct in relation to these activities.

(iii) Vertical Agreement (P.20-21 of the Guidelines of First Conduct Rule) It has come to be recognized that a wide range of arrangements between businesses which stand in a “vertical” relationship to one another are pro-competitive and efficiency-enhancing. Efficient vertical arrangements are an important feature of the construction industry as they enable coordination amongst diverse suppliers for complex construction projects, to achieve minimum wastage and at the lowest cost to the customers. The CIC recommends further examination into the reasons for Singapore’s broad exemption of vertical agreements, and submits that the Competition Commission should consider making a “block exemption” for vertical agreements in the construction industry as one of its priorities.

(iv) Joint Ventures (P.43-46 of the Guidelines of First Conduct Rule) Horizontal cooperation or joint venture to pool together financial and technical resources within the construction sector are not uncommon. Can the guidelines elaborate more on such?

Second Conduct Rule

The CIC would welcome more concrete definitions on the term “Market” in relation to the construction industry. Given the multiple tasks involved in a construction project, it is difficult to determine which construction companies were indeed having a substantial degree of market power in accordance with the Second Conduct Rule.

After all, the CIC is in favor of the Competition Commission issuing industry-specific guidance to ensure that in-service practitioners are better informed of their responsibilities and have a more thorough understanding of how the law applies to different kinds of commercial conduct in the construction industry, especially guidelines in relation to the following to avoid unintended breaches:

- good practice and “DOs” and “DON’Ts” in competitive bidding and tendering;
- good practice and “DOs” and “DON’Ts” in dealings between contractors and sub-contractors;
- good practice and “DOs” and “DON’Ts” for industry associations and unions.

Thank you for your kind attention.