



9 November 2011

Our Ref :



The Honourable Andrew Leung Kwan-yuen, GBS, JP
Chairman
Bills Committee on Competition Bill
Legislative Council
8 Jackson Road
Hong Kong

Dear Sir

PROPOSED CHANGES TO THE COMPETITION BILL

Thank you for your letter dated 27 October 2011 inviting the Association to provide its comments on the proposed amendments to the Competition Bill. Upon considering the proposed changes, the Association has the following observations and suggestions:

1. Warning notice in respect of non hardcore activities

The Association has no comments on the proposal to introduce warning notices where undertakings have committed non hardcore activities.

2. HKCA welcomes the removal of the payment requirement under an infringement notice.

3. De minimis arrangements for excluding the operation of the first conduct rule

It is suggested in your paper that the de minimis arrangements should be based upon the annual turnovers of undertakings. Whilst we have no comments on this approach, and the suggested threshold of HK\$100 million, we have the following observations:

3.1 The exclusion should be available to all businesses and activities during the transitional period.

3.2 Secondly, in setting the threshold the construction industry does not seem to have been taken into consideration. Agreements between small companies in the construction industry could easily exceed the threshold of HK\$100 million. As such, we hope that a higher threshold will be set for the industry.

3.3 With respect to the application of the exclusion to the decisions of an association of undertakings, based upon the reason set out in the preceding paragraph, we also propose that a higher threshold should apply to HKCA, and similar organisations in the construction industry. If required, we will be happy to discuss with you how this threshold should be fixed, and an appropriate figure for the threshold.

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Hong Kong Construction Association

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- 3.4 As to the threshold for excluding SMEs from the operation of the second conduct rule, based on the same reason above we also suggest that a higher threshold should apply to SMEs in the construction industry.
4. We have no comments on the reduction of pecuniary penalty from a maximum of 10% global turnover to 10% local turnover for a maximum period of 3 years.
5. We welcome the decision to take out the right to commence stand-alone private actions.
6. We have no comments on the changes to the merger rule.

Yours sincerely



Thomas Tse
Secretary General