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Working Group on the Interaction between Trade and Competition Policy

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Competition Policy for Hong Kong, China

Introduction

1. Hong Kong, China (HKC) has recently completed a comprehensive review of how best to promote competition in the economy. This note outlines the Government's latest thinking on the matter.

Economic philosophies

2. HKC's trade and competition policies are both grounded on the economic philosophies of free and open trade and minimum government intervention. The ingredients are simple: low predictable taxes so that businessmen can keep the profits of their risk taking; no subsidies or support for business; no tariffs and no non-tariff barriers to imports; no exchange controls; no interference in the economy other than a light prudential framework; the rule of law applied without fear or favour; freedom of communication and information, and strict adherence to all World Trade Organization principles, notably most favoured nation and national treatment.

3. The Hong Kong Special Administrative Region Government (HKSARG) firmly believes that business decisions are best left to businessmen. This philosophy fits the needs of HKC which is only a very small region 1,040 sq. km. in size, with no resources beyond a fine port and six million people. But this is not a philosophy of benign neglect. Nor is it one which carries no pain or penalty. The HKSARG faces difficult decisions on whether, when and how to intervene. These pressures are exactly ones that the Government has gone through in reviewing HKC's competition policy.

Objectives

4. The ultimate objective of competition policy is to **promote economic efficiency** or the best use of resources from the society's perspective. Economic efficiency is a very broad concept in itself and carries various dimensions. For example, it may mean:

- (a) increasing the output obtained from a given input (technical efficiency);
- (b) improving the allocation of resources between different uses (allocative efficiency);

- (c) improving managerial or other kinds of efficiency; and/or
 - (d) improving responsiveness to changing demand and supply conditions (dynamic efficiency).
5. Since economic efficiency is inherently dynamic in context, the interaction between competition and economic efficiency requires more careful study. For example, certain business behaviour which appears anti-competitive from a static angle may actually be driven by the dynamic forces of competition in the market, and hence not at variance with economic efficiency in the dynamic sense. Thus, a market which appears to be monopolistic or the existence of a firm which dominates the market is not necessarily anti-competitive **provided** the market is accessible and contestable.

Other objectives

6. Many economies have included the following as objectives of their domestic competition policies:
- (a) promoting fair competition or fair trade;
 - (b) protecting consumers or enhancing consumer welfare;
 - (c) ensuring small- and medium-sized enterprises have an equitable opportunity to participate in the economy;
 - (d) maintaining "trading order"; protecting the lawful rights and interests of business operators; stimulating creative initiative of entrepreneurs; etc.;
 - (e) contributing to international competitiveness; promoting competitive prices; etc.; and
 - (f) enhancing economic stability and growth.
7. Whilst recognizing the foregoing as desirable, the HKSARG would treat them as ancillary rather than the core objectives of competition policy. For instance, consumer protection is a self-standing policy objective and does not always coincide with the competition policy objective (of promoting economic efficiency). In case there are conflicting objectives, whether within the broad purview of competition policy or between competition policy and other policies, the Government would make a **policy judgment** based on what is best for the economy **as a whole**.

Existing policy

8. HKC is committed to the promotion of competition. This is the means to enhance economic efficiency, which is the ultimate, shared objective of HKC's competition and trade policies. A fundamental test of whether competition exists is whether the market is accessible and contestable.
9. Although competition thrives best on the free force of the market, some degree of government involvement is sometimes called for. It is necessary, for instance, for the Government to put in place a package of legislation to outlaw deceptive trade practices and protect the fundamental rights of consumers. There may also be circumstances where a very high level of investment is involved (as in the broadcasting business), where prudential supervision or regulatory efficiency is needed (as in the banking and financial services sectors), or where the longer term interest of consumers is at stake (as in the provision of utility services). In such circumstances, the HKSARG will ensure that the monopolistic or oligopolistic situation that is allowed to exist does not unduly compromise, amongst other things, the quality of services and the price that consumers have to pay.

10. The needs, requirements and characteristics of individual sectors vary. Accordingly, HKC adopts a sector-specific approach to safeguard competition. The Government also reviews these regulatory measures periodically to ensure they still meet the needs of prevailing circumstances. Where possible, it will undertake liberalization initiatives to promote competition in these sectors. For example:

- (a) following a comprehensive policy review on telecommunications in 1992, the HKSARG introduced competition into the local fixed network services. The Government believes this step will promote economic efficiency in the industry and position HKC to serve as the preeminent communications hub for the region into the next century. Since July 1995, the Government has granted licences to four operators to provide local fixed telecommunications network services;
- (b) the HKSARG began in 1993 to amend domestic radio and television broadcasting licences, as and when they are due for renewal, to include a "free competition clause". Such clause ensures that broadcasters do not engage in unfair or anti-competitive trade practices; and
- (c) since 1991, the HKSARG has, where economically viable, granted bus and ferry franchises for a new network of routes through open tenders. With effect from September 1997, all bus routes have been operating on a non-exclusive basis and all franchisees are no longer subject to a profit control scheme.

11. Whilst promoting competition is important, it is a means rather than an end in itself. The HKSARG has to strike a delicate balance between the promotion of competition and other government policies and weigh these against what is best for the economy as a whole.

Developing a comprehensive competition policy

12. Following a critical review of HKC's competition policy, the Government has recently decided to reinforce the existing policy by making it more explicit, more transparent and ensuring that it is applied in a more comprehensive and consistent manner.

13. To develop a **comprehensive competition policy** for HKC, the HKSARG has, *inter alia*, undertaken to:

- (a) develop and promulgate a policy statement to set out the objectives of HKC's competition policy and provide pointers for government units to follow;
- (b) require all departments and policy-making units to critically review their areas of work to identify and remove as far as possible anti-competitive practices or practices not conducive to creating a competitive environment; and
- (c) require all government units to highlight in all major submissions the implications on competition of all new policy proposals.

14. The Government intends to play an exemplary, proactive and leading role in promoting competition and dismantling barriers to competition. To ensure that various policy-making units can forge ahead in a united front towards promoting competition at the government level, the Financial Secretary, equivalent to a minister of finance, will also be leading a high-level inter-department advisory group.

15. As for restrictive business practices in the private sector, the HKSARG will work closely together with the public watch dog, the Consumer Council, to continue to monitor trade practices, draw up sector-specific codes of practice or regulatory regimes, and assist by referring cases to the Government for examination.

16. As explained, the needs and characteristics of individual sectors vary extensively. The HKSARG will continue to reinforce its comprehensive competition policy with **sector-specific enforcement measures not limited to laws**. This basically means that if anti-competitive behaviour exists in a particular sector, the HKSARG will exhaust all means available before resorting to the more interventionist approach of regulating by laws. These other means include drawing up binding codes of practice specifically catered to the needs and characteristics of the sector concerned, imposing fair competition principles in relevant licensing or franchising conditions, or even raising public awareness through the media. The Government believes that this approach to competition is more in line with our free and open market philosophies, and is more flexible and in depth than a general broad brush approach to legislating against all.

Enforcement of competition policy

17. HKC believes that an all-embracing piece of legislation on competition is not appropriate at this stage of the economy's development. A general competition law is not the only or necessarily most effective means to promote competition. If choices exist, as they do, HKC prefers to encourage industries to self-regulate, say by adopting binding codes of practice.

18. Experience in HKC suggests that self-regulatory regimes do work in that they command respect among members and can bind them to adopting standards to meet social expectations. Such schemes already exist for outbound travel agents and a few professions. For an open, transparent and small economy like HKC, public pressure often plays a useful counterbalancing role. Hence, with a bit of persuasion and pressure from the Government and public watchdogs, there is no reason to believe that these self-regulatory regimes could not effectively bind their members into adopting fair and competitive market principles.

19. Another form of control can be achieved through various government licensing or control schemes. Again it would not be difficult to insert pro-competitive provisions into these sectors, as the HKSARG has already done for the broadcasting and public transport sectors.

20. In case the potential for anti-competitive practices clearly exists and public interest is at stake, the HKSARG is willing to intervene by law. Indeed, HKC already has provisions in a piece of draft legislation that seeks to outlaw price-fixing, discriminatory pricing and the like in the telecommunications sector.

21. HKC sees its current approach as a very pragmatic one entirely in line with the well-trying economic philosophies of free and open trade and minimum government intervention. The Government is not averse to adopting competition laws. But it does not believe the situation is such as to merit the adoption of a broad-brush legislative approach. The Government prefers a less intrusive but more in-depth sector-specific approach, whilst maintaining a broad policy overview to ensure overall consistency.

Way forward

22. HKC adopts a free market and minimum interventionist approach to the promotion of competition. As is typical of its trade policy, the Government adheres to the principles of maintaining a level-playing field for all; seeking to apply the competition policy in a transparent, consistent and comprehensive

manner; relying on market mechanisms to allocate resources in the economy; minimizing government intervention; and encouraging self-regulation in the drive to promote competition.

23. HKC appreciates that different economies adopt different means to attain their competition policy objectives. It respects such differences in choice because each economy has its own characteristics and constraints, provided of course that the basic tenets of our multilateral trading system (like strict adherence to the most favoured nation and national treatment rules) are not compromised.

24. This Working Group provides an excellent forum to exchange ideas on how different economies might contribute to the generally-shared objective of promoting competition as a means of enhancing economic efficiency. This would also reinforce our trade policies by helping to ensure that the benefits of trade liberalization be fully realised.