



HONG KONG RETAIL MANAGEMENT ASSOCIATION

Submission on Proposed Fees Payable to the Government

17 April 2015

The Hong Kong Retail Management Association (“the Association”) concerned with the Commission’s proposed recommendation to the Government in respect of fees payable under the Ordinance, and oppose the concept of charging for applications.

Our views set out as follows:

1. The revised draft guidelines on the Conduct Rules continue to be vague in a number of key areas, making it already very difficult for businesses to self-assess. Businesses should not have to carry a further financial burden (by having to pay a large fee) for the uncertainty caused by the revised draft guidelines. We refer the Commission to the Association’s submissions on the draft guidelines 10 November 2014, 19 December 2014 and the latest submission on the revised draft guideline to be submitted on 20 April 2015. The notable difficulties for self-assessment include:
 - whether its agreement/conduct has the “object” or “effect” of harming competition;
 - whether the effect is “more than minimal”;
 - whether the business has “market power” under the First Conduct Rule (FCR) vs “substantial market power” under the Second Conduct Rule (SCR);
 - whether its efficiencies arguments satisfies the FCR / SCR requirements.
2. Given the infancy of the Hong Kong competition regime, there are no published enforcement records (e.g. decisions) which serve as another point of reference for businesses to self-assess. The decisions of applications (e.g. block exemptions) will benefit the business community as a whole, and so it is questionable whether the private applicant alone should bear the cost.
3. The high level of proposed fees sends a worrying message to the business community; businesses will be discouraged from making applications to the Commission. During the infancy of a new competition regime, the critical goal of a new authority must be to assist businesses in complying with the law.
4. One reason the Commission has put forward for the high fees is the level of work involved in assessing these applications. If businesses are asked to pay such high fees, the Commission should be prepared to publish indicative timescales for providing a decision.



5. There are several established jurisdictions which do not charge businesses (e.g. the EU, China). It is unclear why the Commission chose to recommend fees to be payable, especially during the infancy of the regime. It is also unclear how the Commission came up with its proposed fee amounts.
6. If the Commission is minded to propose fees, has the Commission considered a more flexible fee mechanism? For instance, Singapore separates its fees in relation to agreements and conduct applications into a lower “initial fee” and a more substantial “further fee” which is only required if the application requires significant analysis. Where the Singaporean Commission chooses not to provide guidance or make a decision, it will usually refund the fee. For merger applications, the fees payable in Singapore also vary depending on the depending on the size of the acquisition.

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About HKRMA

The Hong Kong Retail Management Association (HKRMA) was founded in 1983 by a group of visionary retailers with a long-term mission to promote Hong Kong's retail industry and to present a unified voice on issues that affect all retailers. Established for 31 years, the Association has been playing a vital role in representing the trade, and raising the status and professionalism of retailing through awards, education and training.

Today, HKRMA is the leading retail association in Hong Kong with membership covering more than 7,800 retail outlets and employing over half of the local retail workforce. HKRMA is one of the founding members of the Federation of Asia-Pacific Retailers Associations (FAPRA) and is the only representing organization from Hong Kong. FAPRA members cover 17 Asian Pacific countries and regions.