

Consultation Paper on the Proposed Legislative Amendments to the
Competition Ordinance relating to the Competition Tribunal

Submission of the Hong Kong Bar Association

1. The Judiciary Administration consults on a number of proposed amendments to the Competition Ordinance (Cap 619) (“CO”) relating to the Competition Tribunal (“Tribunal”) that are considered essential to the proper functioning of the Tribunal. The Hong Kong Bar Association (“HKBA”) submits its views on the consultation paper.

2. The consultation paper does not enclose a draft Bill for consideration. Proposed amendments are described together with justifications for them. The HKBA accordingly comments on the proposed amendments on the basis of the terms described in the consultation paper and sees the need to submit further comments when the draft Bill is gazetted or otherwise made public.

3. The HKBA agrees with the approach described in paragraph 8 of the consultation paper to amend the CO to make clear the jurisdiction and powers of the Tribunal notwithstanding the general provision in the CO for the Tribunal to follow the rules of practice and procedure of the Court of First Instance.

4. The HKBA agrees with the proposal in paragraph 9 of the consultation paper to amend the CO to clarify that the Tribunal will have in the exercise of its jurisdiction (including the enforcement of its orders) the same powers, rights and privileges of the Court of First Instance.

5. The HKBA agrees with the proposal in paragraphs 10 and 11 of the consultation paper to amend the CO to make explicit provision therein for the Tribunal to order the payment of interest on debts/damages and to determine the rate of interest and the manner of payment of such interest.

6. The HKBA agrees with the proposal in paragraphs 12 to 14 of the consultation paper to amend the CO to empower the Tribunal to order the payment of interest in respect of non-payment or late payment of pecuniary and financial penalties under ss 93, 169 of the CO as well as costs under ss 63(2)(b), 96 of the CO. The HKBA considers that further comments may be necessary in respect of the detailed amendments when they are published.

7. The HKBA disagrees with the proposal in paragraphs 15 and 16 of the consultation paper to amend the CO to empower the Tribunal to make prohibition orders like those made under s 21B of the High Court Ordinance (Cap 4). Prohibition orders in aid of enforcement of orders of the Tribunal can be sought and determined in the ordinary manner by the Court of First Instance under s 21B.

8. The HKBA agrees with the proposal in paragraphs 17 and 18 of the consultation paper to amend the CO to empower a member of the Tribunal to make an order for reimbursing a witness in respect of expenses reasonably and properly incurred by him/her.

9. The HKBA agrees in principle with the proposal in paragraphs 19 to 26 of the consultation paper to amend the CO to enable the Tribunal's registrars to perform judicial work that is similar to that performed by their counterparts in the High Court. However, the HKBA notes that rule 62 of the United Kingdom Competition Appeals Tribunal sets out the acts of that tribunal that are to be exercised to be done by the president of that tribunal acting alone or done by the registrar if so authorized by the president. The HKBA suggests that a similar provision be incorporated in either the CO or the Tribunal's rules to demarcate the judicial work that the registrars may not do, the judicial work that the registrars may do if so authorized by the president or vice-president of the Tribunal and the judicial work that the registrars are generally authorized to do.

10. The HKBA agrees with the proposal in paragraphs 27 and 28 of the consultation paper to amend the High Court Ordinance s 55 to provide for detailed rules governing transfer of proceedings from the Court of First Instance to the Tribunal.

11. The HKBA agrees with the proposal in paragraphs 29 and 30 of the consultation paper to amend the Legal Practitioners Ordinance (Cap 159) to make provision for solicitor advocates granted with the higher rights of audience for the High Court and the Court of Final Appeal in civil proceedings should also be granted similar rights in respect of the Tribunal.

12. The HKBA agrees with the proposal in paragraphs 31 and 32 of the consultation paper to amend the Evidence Ordinance (Cap 8) to empower the Tribunal to make an order to bring up persons in custody to give evidence before it.

13. The HKBA agrees with the proposal in paragraphs 33 and 34 of the consultation paper to amend the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap 591) to ensure the extension of the jurisdiction of the Tribunal and the territorial limit of its orders to the Hong Kong Port Area.

14. The HKBA agrees with the proposal in paragraphs 35 to 38 of the consultation paper to amend the Electronic Transactions Ordinance (Cap 553) to add the Tribunal to Sch 2 of that Ordinance.

Dated 11th November 2013.

Hong Kong Bar Association

