

CONSUMER COUNCIL**Submission concerning an Application to the Competition Commission
for a Decision under Section 9 of the Competition Ordinance
in relation to the Code of Banking Practice (AD/01XX)**

1. The Consumer Council (Council) is pleased to provide its views to the Competition Commission (Commission) concerning an application (Application) to the Commission for a decision under section 9 of the Competition Ordinance (Cap. 619) in respect of the Code of Banking Practice (Code), issued by the Hong Kong Association of Banks (HKAB) and the DTC Association (DTCA).
2. As part of its statutory functions (Cap. 216), the Council encourages businesses and professional associations to establish codes of practice to regulate the activities of their members. Given the Council's experiences with the Code, at the outset, the Council would like to stress that the Code plays an important role in enhancing consumer protection through setting out minimum requirements for the promotion of good banking practices and increasing transparency in the provision of banking services to individual consumers.
3. Having said that, the Council considers it not in the position to interpret the applicability of the "Legal Requirement Exclusion" as set out in the Application. In this submission, the Council puts forward its observations on how the Code prompted authorised institutions (AIs) to serve consumers better and in their interest even there may raise some competition-related issues in the Code; and at the same time, the Council's view of competition oversight of the Commission in the regulated sectors.

Council's Participation in the Code Review Process

4. As stated in paragraphs 3.1.6 and 4.3.9 of the Application, the Council had been consulted during the development of the revised Code. The following serves to provide the Council's experiences in relation to the review process of the Code.
5. Upon invitation, the Council provided its views in 2008 and 2014 consultation exercises. The latest review was in 2014 and a draft revised Code was sent to the Council by HKAB for comment. In early 2015, the Council was informed by the Hong Kong Monetary Authority (HKMA) that its comments had been considered and some of them had been taken on board.
6. The Council appreciates the invitations from HKAB and HKMA for providing the opportunity to consider and respond to the draft revised Code which would facilitate the exchange of stakeholders' views and help address consumer concerns. Nevertheless some suggestions of the Council were not included in the revised Code, which in the view of the Council would further improve the positions of banking consumers in dealing with AIs if adopted. They include the adoption of an "opt-in"

approach for the over-the-limit facilities of the credit card when the card is first registered to render consumer a choice and to guard against mis-selling; and the enhancement of transparency on how well individual AI is complying with the Code¹.

Nature and Significance of the Suspended Code Sections

7. Though the suspended code sections are all relating to pricing which are of potential competition concern, the Council is of the view that they are important for protecting consumers.

8. For example, sections 5.10, 6.5, 22.11, 26.9, 26.12, 26.15(e), 26.15(f), 28.2, 28.3, 28.5, 34.3, and 52.1 of the Code abolish unreasonable fees (e.g. termination fee, administrative charges, review fee, over-the-limit fee, account inactivity fee, renewal fee) otherwise payable by consumers in using or terminating the use of banking services. Besides, sections 12.3, 26.1(c), 28.4, 30.1 and 36.3 set fee or credit limits, or minimum periodic payment for credit card, which are in consumer interest.

9. In particular, section 12.3 requires financial institutions not to charge customers extortionate interest rates, and that the loan fee should be reasonable.

10. Section 26.1(c) requires card issuers to act responsibly in the issue and marketing of credit cards and the setting of credit card limits, in particular to persons (such as full time students) who may not have independent financial means. As such, card issuers are required not to grant credit limit exceeding HK\$10,000 to a student of an institution of higher education, unless the student has submitted a written application and has given financial information indicating that the student has an independent ability to repay the proposed extension of credit in connection with the account.

11. Given the increasing public concerns over money lending-related malpractices and aggressive marketing behaviour of financial institutions, and post-secondary students and young working adults are the key targets to lure into different kinds of spending and even borrowing for debt repayment from financial institutions of different nature, the Council considers that provisions on credit limit in the Code is in broad public interest. They would protect consumers, particularly the young ones who are not financially independent or more susceptible to malpractices, from over-borrowing and thereby over-indebtedness to a certain extent².

12. The Council is of the view that the suspended Code sections are important

¹ As far as the Council is aware, HKMA has previously provided the overall results of AI self-assessments in its annual reports, though on a consolidated basis

² According to the surveys conducted by the Investor Education Centre (IEC), young people showed an increasing reliance on using credit card as a means of borrowing in recent years. In 2017, the IEC survey targeting young working adults aged 18-29 revealed that about 20% of the credit card owners did not repay their statement in full each month, whereas in 2014, the reported figure by the same age group at that time was 5% only.

(<https://www.thechinfofamily.hk/web/iec/en/press-release/pr-20170531.html>)

for ensuring consumer protection and they have demonstrated their benefits to consumers.

Implications of the Decision

13. Notwithstanding that the suspended sections of the Code are in consumer interest, they do have the effect of restricting AIs from competing with each other from charging different fees to recoup their accounts at different costs or offer different credit limits to attract customers such as students, which may raise some potential competition issues.

14. Clarification from the Commission is therefore warranted as to the scope of exclusion. Whether the decision of exclusion from the first conduct rule under the Application would have the effect that the provisions regarding recommended price and credit levels under the Code would be exempted; and whether it would imply that any Code amendments in future (paragraph 4.1.1 of the Application), in particular those related to concerted practices and serious anti-competitive agreements, though endorsed by HKMA, would not be excluded from competition oversight.

15. The Council is of the view that if the Commission grants the Legal Requirement Exclusion to the applicants, it should ensure for the public interest that (i) the suspended code sections be restored; (ii) the effect of the decision be confined to the version of the Code as of the date of the submission of the Application; and (iii) the HKMA³ secures the AIs' compliance with the Code to the effect that the core principle of "promotion of competition" in the banking services market under the Code is upheld.

16. Moreover, the decision under the Application, if made, may set a precedent for other industry codes, to leverage on the criteria for the Legal Requirement Exclusion to apply for the exclusion from the competition provisions. This would have a far-reaching effect on the competition oversight in the market place. Since many sector regulators in Hong Kong do not have a statutory function in promoting competition, this will limit the application of the competition rules in those regulated markets. The Commission should retain its competition oversight of the industries, where appropriate.

17. The United Kingdom's Competition and Markets Authority (CMA)⁴ had recently completed an investigation into the retail banking market in that jurisdiction (particularly in relation to the supply of retail banking services to personal current

³ The functions of the HKMA are: maintaining currency stability within the framework of the Linked Exchange Rate system; promoting the stability and integrity of the financial system, including the banking system; helping to maintain Hong Kong's status as an International financial centre, including the maintenance and development of Hong Kong's financial infrastructure; and managing the Exchange Fund.

⁴ See <https://www.gov.uk/government/publications/retail-banking-market-investigation-order-2017>

account customers and small and medium sized enterprises in the United Kingdom). It was concluded that there were three separate "adverse effects on competition" in the United Kingdom in that market, namely those in respect of personal current accounts (including overdrafts), business current accounts, and small and medium enterprises lending. As a result, CMA made an order to remedy these adverse effects. This reflects that even in a jurisdiction where the banking and financial market operators are subject to regulation by a dedicated statutory authority, the competition regulator still has its effective role to play from the perspective of upholding pro-competition principles, enforcing prohibitions of anti-competitive agreements and conduct and working with the industry regulator to protect consumer interests.

Concluding Remarks

18. To conclude, while the Council has no comment on the applicability of the "Legal Requirement Exclusion" of the Code under the Competition Ordinance, it is of the view that consumer interests should be duly addressed in the course of considering the Application. As such, it is suggested that the suspended Code sections in the consumer interests be restored if the Decision is granted. Besides, in view that the Decision may have significant implication on competition oversight of regulated industries, the scope and implications of the exclusion under the Decision should be clarified. Last but not the least, competition of the market should not be compromised. Therefore, competition oversight should be retained properly, balanced with consumer interests.

**Consumer Council
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