



競爭事務委員會  
COMPETITION  
COMMISSION



通訊事務管理局  
COMMUNICATIONS  
AUTHORITY

**Revised Draft Guideline on  
Applications for a Decision  
under Sections 9 and 24  
(Exclusions and Exemptions)  
and Section 15  
Block Exemption Orders**

30 March 2015

# Contents

# Guideline on Applications for a Decision under Sections 9 and 24 (Exclusions and Exemptions) and Section 15 Block Exemption Orders

of the Competition Commission (the Commission) under sections 35(1)(b) and (c) of the Competition Ordinance<sup>1</sup> (the Ordinance<sup>2</sup>). The Guideline sets out:

the manner and form in which the Commission will receive applications for a decision or block exemption order.

- how the Commission expects to examine its applications and make a decision or issue a block exemption order.

While the Commission is the primary decision-maker in this area, it is important to note that the Commission's jurisdiction is limited to the territory of the Ordinance. The Commission does not have jurisdiction over decisions or block exemption orders made by other competition authorities in other jurisdictions.

# I Introduction

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The Ordinance applies to all sector  
has the object or eff

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ies of agreements

particular categories of  
Schedule I of the  
Block Exemption Order in response to an  
(Article 101(3)) or on its own initiative

takings which are consider.  
or a Decision or a Block Exemption Application with gener

procedure to follow  
process that the Commission will follow  
Commission

## 2 Exclusions and Exemptions

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than  
follow  
Rule

section 3 provides that the Competition Rules and the enf  
ts 4 and 6 of the Ordinance do not appl

**Body Exclusion**

under regulations;

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Relevant exclusion or exemption		Exclusion or exemption from First Conduct Rule	Exclusion or exemption from Second Conduct Rule
<b>General Exclusions</b>	Agreements of lesser significance		
	Conduct of lesser significance	✓	✓
	Agreements of lesser significance	✓	
	Conduct of lesser significance		
	Agreements of lesser significance	✓	
	Conduct of lesser significance		
<b>Block Exemption Orders</b>		✓	
<b>Public Policy Exemption</b>		✓	
<b>International Obligations Exemption</b>			
<b>Statutory Body and Specified Person or Activities Exclusions</b>			

reference to a statutory body in section 3 of the Ordinance includes an employe  
or agent of the statutory body acting in that capacity  
not, however  
those entities are also statutor

### 3 Confidentiality and Disclosure

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Application should

As explained further in the Commission  
wishes to make a claim f  
respect of inf  
the applicant should identify the relevant inf  
set out certain minimum inf  
takings may not refrain  
on the basis that the information is conf

As explained further in the Commission  
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As explained further in the Commission  
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Commission.

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## 4 Other Commission Procedures

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## 5 Considering Whether to Make an Application for a Decision or Block Exemption Application

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...making ... ed in an agreement or conduct which ... Application to be a ... the Commission ... takings that are party to the agreements in question ... mation which might assist the Commission in its consider ... Application.

The Commission expects the category of agreements that are the subject of a Block Application to be representative ... and the applicant must demonstr ...

For sector specific Block Exempt ... evidence showing there is a greater need for ... relevant sector as compared with other sector ...



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Commission for a Decision or a Block Ex  
apply for a Block Ex

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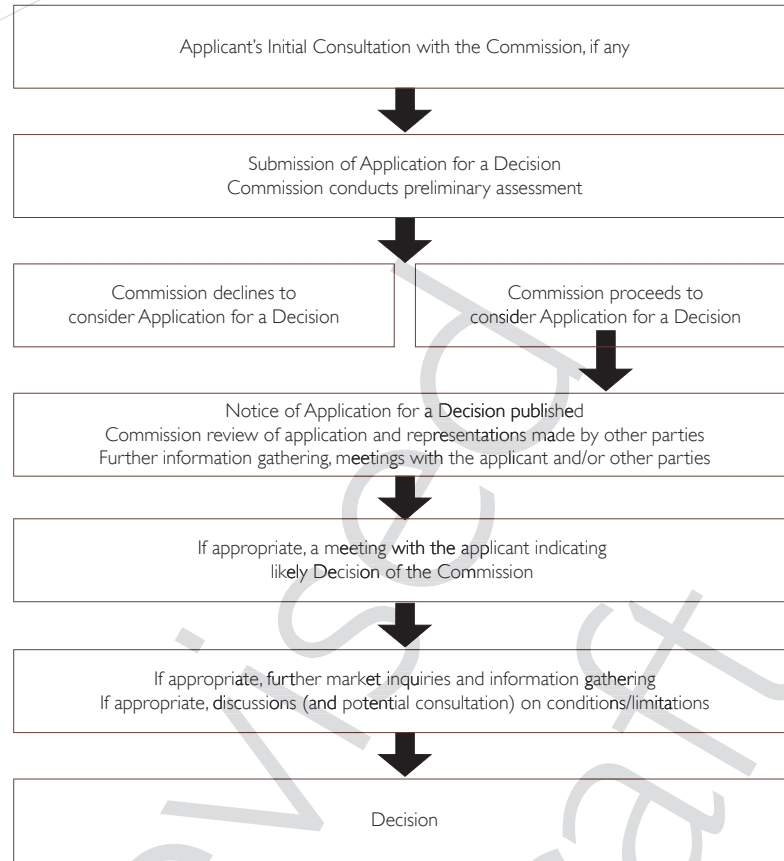
... and ... unity from enforcement ...  
... The Commission may in its  
... enforcement action in respect of any such agreement or conduct  
... (if unal) if it declines to consider an application,  
... exemption Order. In any such case  
... the applicant in the relevant enforcement  
... 4 of this Guideline.

Applicants are therefore encouraged to seek legal advice before  
... or a Decision or Block Exemption Order.

## **6 Application Process for a Decision**

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Figure 2. Key steps f



Commission expects Applicant to provide information on the Commission's intended response to the Commission's information.

For a Decision to be made, the Commission must be satisfied that the Applicant's proposal is in the public interest. Applicants should provide information on the Commission's intended response to the Commission's information.

**and**

### ***Novel or unresolved question of wider importance***

particular; the following:

- the interests of the consumer;
- the agreement or conduct; and/or
- the extent to which the agreement or conduct or similar agreements or similar conduct is in widespread usage in the marketplace.

### ***No clarification in existing case law or Commission decisions***

before submitting an Application for a Decision, there is no existing guidance in the case law or decisions of the Commission.

### ***Sufficient information to make a Decision***

For the Commission to make a Decision, it must be satisfied that the information provided is sufficient to enable it to do so.

### ***Not a hypothetical question***

In this context, the Commission will not gener  
regarding agreements or conduct which ha  
for a Decision in relation to a future agreement or conduct in which they intend to  
engage. In this case

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description of the relevant agreement or conduct (including copies of any

visions or elements of the agreement/conduct which might  
and an explanation of the nature of those

in's view of the relevant markets in  
to share data (including for competitor  
the situation in such markets;

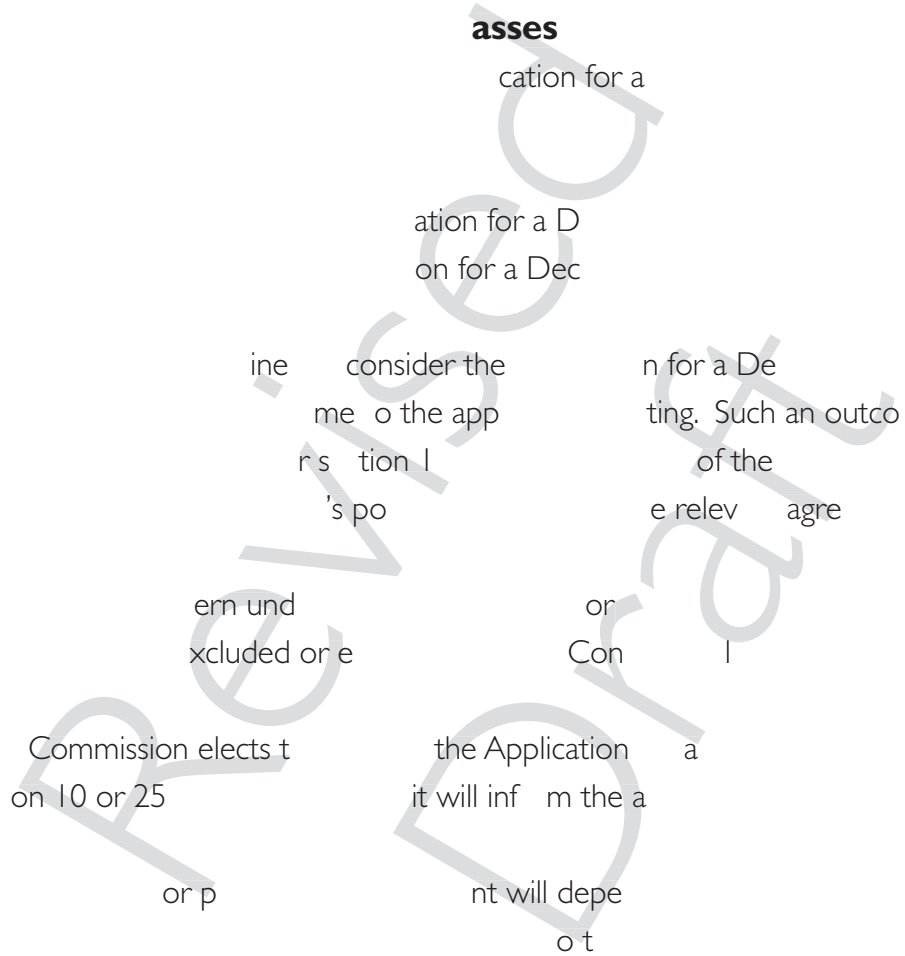
information on affected suppliers and customers; their  
an explanation (including support  
the relevant agreement/conduct satisfy  
exemption; and

(g) where submissions/applications have

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status of the  
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## 7 Preliminary Assessment of Application for a Decision

The Commission will conduct a preliminary assessment of the application for a decision provided by



## 8 Consideration of Application for a Decision

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...ion  
...at ... or a Decision in accordance with  
...ing ... posting a notice of the application  
...ion of the application on the Commission

### ...y to be affected b

... and consider representations from,  
... a Decision (for example, ...  
... applicant) in accordance with section 10(1) or 25(1) of the Ordinance  
... sections 10(2) and 25(2) of the Ordinance  
... within which representations about the  
... it pub  
... calendar da  
... after the da,

*Engagement with the applicant*

ing the review of the Application for a Decision,  
or more meetings with the applicant to discuss such matter

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## 9 Making a Decision

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where the Commission mak  
that an agreement or conduct is excluded or exempt,  
une from action under the Ordinance with respect to that agreement or

The need for conditions or limitations on Decisions will be considered on a case b

However, the Commission will lik  
Decision confirms the applicability of an exclusion or ex

9.6 A Decision that the agreement or conduct is not excluded or ex

the Commission h  
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## 10 Post Decision Matters

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### Rescission

10.1 Sections 14 and 29 of the Ordinance pro

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unity from the date

Where the Commission has made its Decision subject to conditions or limitations, and the undertaking's compliance with those conditions or

taking fails or ceases to comply with those conditions or limitations, sections 12(2), 13(1), 14(1), 15(1), 16(1), 17(1), 18(1), 19(1), 20(1), 21(1), 22(1), 23(1), 24(1), 25(1), 26(1), 27(1), 28(1), 29(1), 30(1), 31(1), 32(1), 33(1), 34(1), 35(1), 36(1), 37(1), 38(1), 39(1), 40(1), 41(1), 42(1), 43(1), 44(1), 45(1), 46(1), 47(1), 48(1), 49(1), 50(1), 51(1), 52(1), 53(1), 54(1), 55(1), 56(1), 57(1), 58(1), 59(1), 60(1), 61(1), 62(1), 63(1), 64(1), 65(1), 66(1), 67(1), 68(1), 69(1), 70(1), 71(1), 72(1), 73(1), 74(1), 75(1), 76(1), 77(1), 78(1), 79(1), 80(1), 81(1), 82(1), 83(1), 84(1), 85(1), 86(1), 87(1), 88(1), 89(1), 90(1), 91(1), 92(1), 93(1), 94(1), 95(1), 96(1), 97(1), 98(1), 99(1), 100(1), that the immunity pursuant to that Decision ceases to apply with effect from the date on which the non-compliance begins.

10.10 Where an undertaking is subject to a Decision which is subject to a condition or limitation, the Commission may, if it is satisfied that the undertaking has failed to comply with that condition or limitation, or that the undertaking is likely to fail to comply with that condition or limitation, to require the undertaking to take such steps as the Commission may specify in order to ensure that the undertaking complies with that condition or limitation.

## **II Exercise of the Commission's Discretion Whether to Issue a Block Exemption Order**

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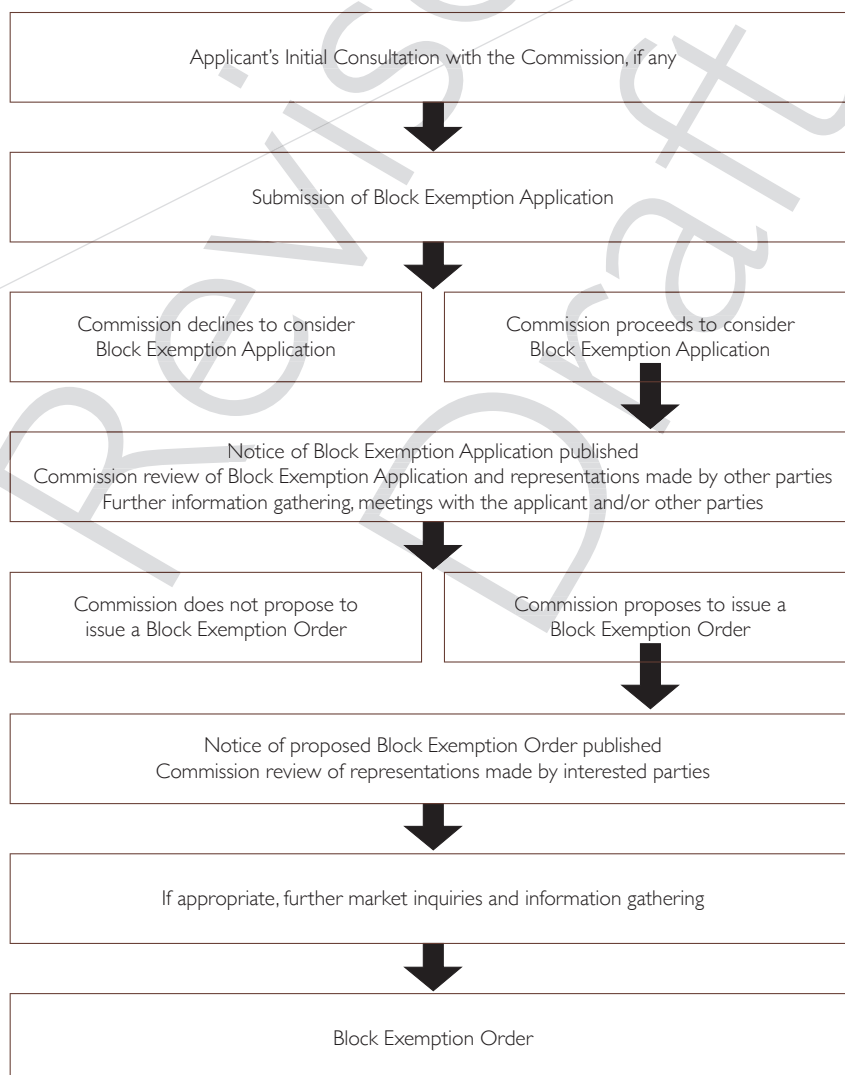
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### Block Exemption Application



## Initial Consultation for a Block Ex

potential applicants should approach the Commission pr  
Exemption Application.  
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sample of agreements falling

visions or elements of the agreements falling within the  
rise to competition concern

an explanation of the nature of those concerns including possible  
an explanation of the view of the applicant on the definition  
ected together with market share data (including for comparison  
information on the competitive situation in such market  
information on affected supplier  
extent available to the applicant;

(f) an explanation (including support

The applicant should also provide a non-conf  
Application to the Commission.  
the Commission should it decide to consider the Block Ex  
paragraph 12.1 of this Guideline).

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## 12 Considering Whether to Issue a Block Exemption Order

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## 13 Issuing a Block Exemption Order

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the Commission will also engage with, and  
persons likely to be affected by a Block Ex  
in the appropriate cases to provide additional wr  
information in response to representations receiv  
information from paragraph 13.5

Under section 16(3) of the Ordinance  
the representations on the proposed Block Ex  
on which the notice is published.

13.5 With a view to transparency  
publish an online summary of this  
representations received in response to  
this notice.

Where the Commission decides to issue a Block Exemption Order (subject to any conditions or limitations), the requirements of section 15 of the Ordinance shall be complied with by the Commission.

## 14

the Commission shall, in the course of its functions, monitor the operation of any exemption order issued by it and, if it is satisfied that the Commission should cease to issue exemption orders of that description, it may, by order, amend the Ordinance to provide for the Commission to review any exemption order issued by it.

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## 14 Matters Arising After the Issue of a Block Exemption Order

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place in the territory of Hong Kong or in the  
agreement that affect the category of agreement  
information relating to the particular category  
knowledge of the Commission since the Block  
st issued.

the Commission may vary the Block Ex

Where the Commission proposes to vary the Block Ex  
will publicise the proposed variation with reasons  
section 20 of the Ordinance  
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