



競爭事務委員會  
COMPETITION  
COMMISSION



通訊事務管理局  
COMMUNICATIONS  
AUTHORITY

# Revised Draft Guideline on **The First Conduct Rule**

30 March 2015

# Contents

# Guideline on the First Conduct Rule

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... forcing the Ordinance, it has  
... jurisdiction with the CA in respect of the anti-  
... of certain undertakings oper  
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# I The First Conduct Rule

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This Guideline pro  
First Conduct Rule

Revised Draft

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...taking is explained in detail in Part 2 of this Guideline

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## 2 Terms Used in the First Conduct Rule

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under the Ordinance.

### **Single economic unit**

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... of the same undertaking.

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Commission will assess whether the relevant entities constitute a single economic unit.

When determining whether two or more entities should be considered a single economic unit, the Commission is not limited to the notion of a corporate group within the meaning of the Companies Ordinance (Cap 622) or other la

- 2.8 Whether or not separate economic entities should be treated as a single economic unit depends on the facts and circumstances. The Commission will assess whether the relevant entities constitute a single economic unit.

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### ***Independent distributors and distribution agents***



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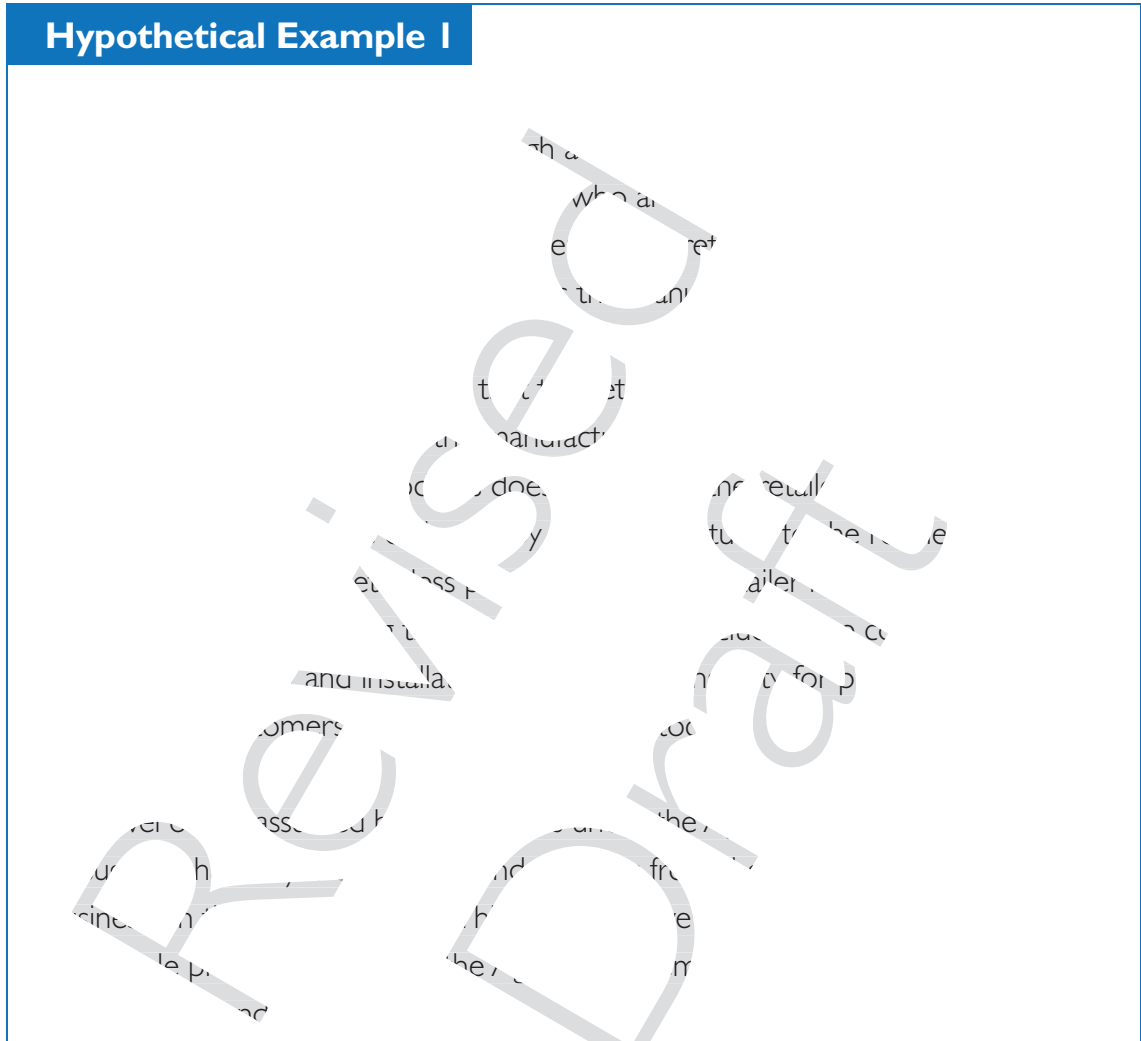
costs associated with advertising or sales promotion for the  
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training of personnel; and  
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### Hypothetical Example I



### *Employees and trade unions*

## Self-employed persons

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poses of the Ordinance.

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... ed person is similar to that which  
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An anti-competitive arrangement might comprise a series of activities by which competitors are harming competition. This can be achieved through various sub-agreements for example:

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## Hypothetical Example 2

Each calendar quarter, a number of private language schools in Hong Kong complete a survey, organised by one of the schools, which requests the schools to provide detailed information on their intended fee increases for the following quarter. The results of the survey are then distributed to each school that participated in the survey in advance of the schools finalising their respective fee arrangements for the next quarter. The results of the survey show the proposed future fees for all participating schools by name.

Assuming there is no evidence of an agreement, the Commission would consider the language schools' behaviour as evidence of a concerted practice. In a competitive market, each language school would make its fee decisions independently. This would result in a range of fee levels at the different schools, and a variety of options for students in terms of price. The concerted practice has the effect of removing all uncertainty between the schools as to their respective fee-setting policies. This conduct harms competition and leads to higher prices.

### Hypothetical Example 3

A highly specialised insurance product was launched into the market with only three providers in Hong Kong. The product is sold to consumers via independent brokers. The sales directors of the three insurance providers recently attended a corporate golf tournament. During the tournament, the directors mentioned the commission rate that they currently offer brokers and one director commented that he was planning to lower his company's commission rate to a particular level. The information exchanged by the directors is confidential in nature. In the month following the golf tournament, each of the three insurers dropped the level of broker commission offered by their respective companies to identical levels.

The Commission would view the information exchange on intended commission levels as evidence of a concerted practice between the three insurance providers. The Commission would likely infer that the insurers took account of the information when determining their future commission levels. The fact that the parties exchanged information on only one occasion, and even assuming there was no agreement to lower commission as such, would not affect the analysis.

...ing competition

The First Conduct Rule is not limited to professional associations or bodies, or associations of associations etc

...essional association has statutory or regulatory functions does not mean that it is not an association of undertakings or that its decisions do not have an effect on competition.

The Commission considers that, without limitation, the constitution of the association, its rules, regulations, rulings, board, ... of the association

... an association ...

... with ...

### Hypothetical Example 4

At the annual meeting of an association representing mooncake bakers, the association's executive proposed a non-binding resolution that encouraged members to introduce a price increase of HK\$10 on all mooncakes in time for the Mid-Autumn Festival. The resolution was passed unanimously. The stated aim of the resolution was to support the association members' position in the market as manufacturers of a "premium" product and to protect members' profit margins. Association members generally implemented the price increase.

Although the resolution is non-binding and some members do not comply with it, the Commission would consider the resolution as a decision of the association having the object of harming competition.

The Commission would also consider the conduct in the example to be Serious Anti-competitive Conduct under the Ordinance.

## 3 Object or Effect of Harming Competition

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### **Effect of harming competition**

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***Restrictions necessary for a legitimate commercial purpose***

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to the implementation of a separable  
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## 4 Exclusion for Agreements Enhancing Overall Economic Efficiency

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A more detailed discussion of the gener  
economic efficiency is contained in the  
discussion of other exclusions and ex

## 5 Serious Anti-competitive Conduct

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In cases of Serious Anti-competitive Conduct:

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## 6 Agreements that May Contravene the First Conduct Rule

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The First Conduct Rule applies to agreements if they have the object or effect

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Horizontal agreement is an agreement made between competitors, each operating at the same level

Horizontal agreements may

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For example, the association might issue a recommendation to member  
and/or publish (possibly binding) recommendations or fee  
the object of harming competition  
to a ... agreement ... concerted practice

## Hypothetical Example 5

A number of new car dealers in Hong Kong meet to discuss how to avoid supposed consumer confusion on the range of car-financing options available in the market. The dealers agree to minimum interest rates on car finance packages. They also note that many dealers regularly offer heavy discounts from the list price prior to Chinese New Year. To prevent “too much” undercutting in the market, they agree to a discount of no more than 5% off the list price.

These agreements relating to the elements of price would be viewed by the Commission as having the object of harming competition. By collectively setting a minimum interest rate and fixing the maximum discount, particular elements of price competition have been agreed by the competitors when these matters should be determined independently.

As the conduct has the object of harming competition, it is not necessary for the Commission to consider whether the conduct has or is likely to cause harmful effects on competition in the relevant market.

The Commission would also consider the conduct in the example to be Serious Anti-competitive Conduct under the Ordinance.

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### Hypothetical Example 6

A group of coach companies supplying services to residents at particular residential buildings meet to discuss how they operate their services across Hong Kong. To enable them all to make what they consider to be a reasonable profit, they decide to allocate between themselves a number of buildings based on the total projected number of passengers. They agree not to provide services or to pursue customers which have been allocated to another company. They also agree not to launch new services without consulting each other.

This agreement not to compete with one another defined customer's has the object of harming competition. The agreement removes a choice of supplier with the likely result of higher prices for the services concerned.

Having concluded that the agreement has the object of harming competition, the Commission is not required to show that the conduct has or is likely to have harmful effects in the market.

The agreement is unlikely to satisfy the conditions of section 1 of Schedule 1 to the Ordinance. While it might be argued that the agreement can be defended on the grounds that it rationalises and avoids overlapping services, the arrangement entails the elimination of all competition between the parties concerned and on this basis the terms of section 1 of Schedule 1 are unlikely to be satisfied.

The Commission would also consider the conduct in the example to be Serious Anti-competitive Conduct under the Ordinance.

### Hypothetical Example 7

Local salted fish producers have faced financial difficulty for a number of years as supply in Hong Kong has increasingly outstripped demand. Given this “crisis” affecting the industry, the main producers meet to discuss how to restructure the sector with a view to rationalising what they consider to be a situation of “over capacity”. A scheme is agreed which encourages certain producers to withdraw from the production of salted fish for a period and to refocus their commercial activities on other areas of business. Those producers who continue to operate their salted fish businesses make certain compensation payments to the producers leaving the market and, as a further expression of solidarity, agree to cover the costs of decommissioning relevant production lines.

The Commission would view this scheme as having the object of harming competition. In a competitive market, the producers would be expected to make production and capacity decisions independently. It is not for the market participants in a particular market collectively to agree what the market outcome should be.

The Commission would also regard the conduct as Serious Anti-competitive Conduct within the meaning of the Ordinance.

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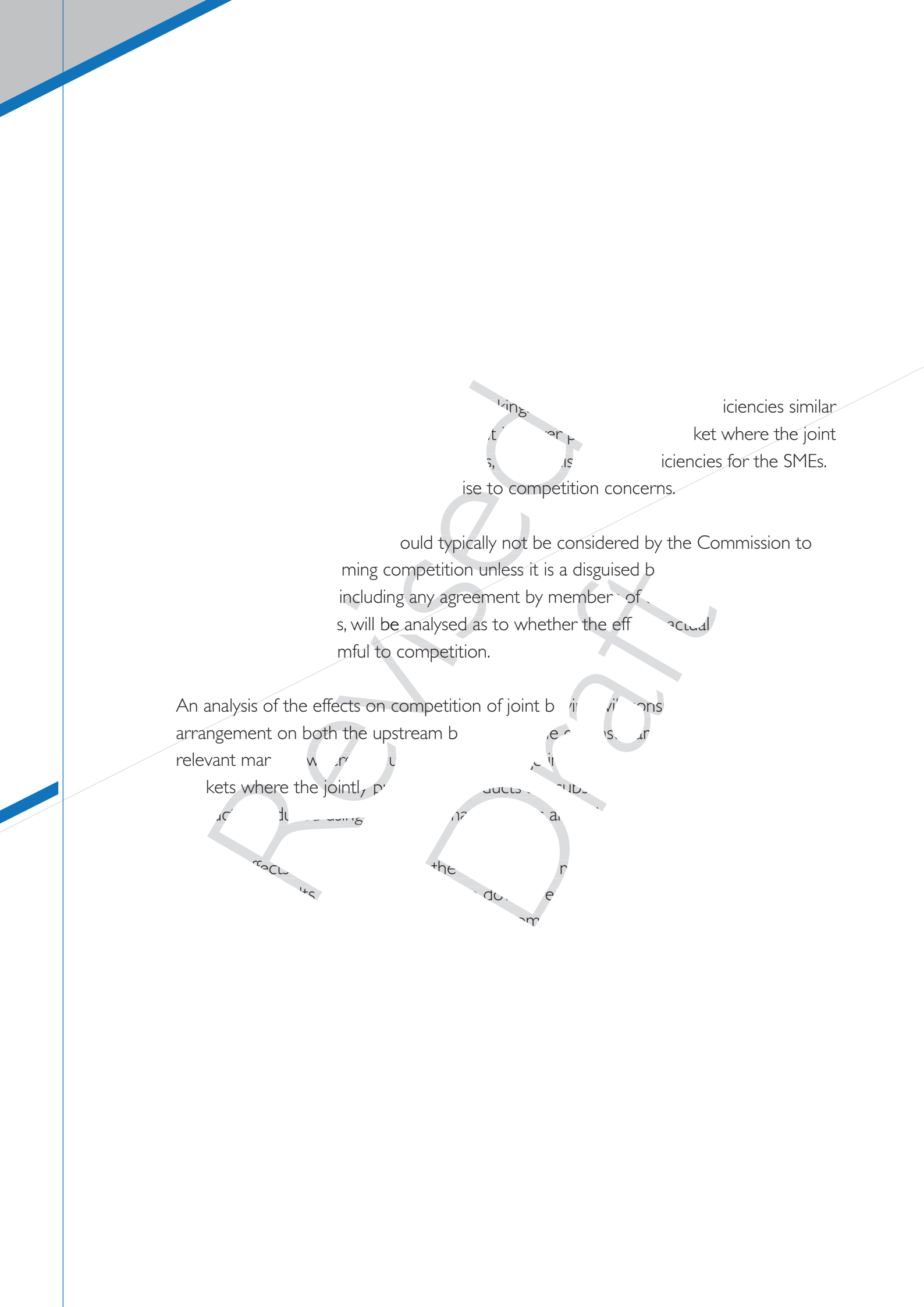
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### Hypothetical Example 8

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### Hypothetical Example 9

With a view to achieving savings in their input costs, 100 small snack food retailers and market stall holders from across Hong Kong form a joint buying group. The buying group members must buy at least half of their snack food products through the buying group. Together, the small retailers account for a small portion of the relevant buying and selling markets in Hong Kong and there are a number of strong competitors in both buying and selling markets (including large wholesalers and supermarket chains).

The arrangement does not have the object of harming competition and the Commission would be unlikely to find that the arrangement has any anti-competitive effects.

Even if the formation of the buying group enhances the commonality of input costs across the small retailers to an extent, their market position on both the buying and selling markets and the presence of large competitors suggests harm to competition is unlikely.

If the joint buying agreement did give rise to harmful effects on competition, it would still be likely to generate economic efficiencies in the form of economies of scale. As the buying group members face strong competitive pressures in the downstream selling market(s) from supermarket chains, it is likely that the cost savings achieved by the joint buying will be passed on to consumers. The general exclusion for agreements enhancing overall economic efficiency may therefore apply.

### ***Agreements to exchange information which may have the object of harming competition***

Private on their future individual intentions or plans. If they consider that the agreement to has the object of harming competition. paragraphs 2.28 to 2.30 of this Guideline, where an exchange of such information of a concerted practice, is considered to be giving the object of harming competition.

#### **Hypothetical Example 10**

A trade association for junk owners collects from and circulates to its members information on their respective proposed future prices. This includes information as to the proposed prices for specific journeys. The information is not made available to the public and is circulated to members in advance of a seasonal price review by the association members.

Absent a decision of the association giving rise to the information exchange or evidence of an agreement between members to engage in the information exchange, the Commission would infer that this arrangement is implemented as part of a concerted practice with the object of harming competition. The conduct allows the junk owners to adjust their future pricing to reflect the proposed pricing of competitors and thus reduces price competition in the market. The information exchange arrangement is an indirect form of price fixing.

The Commission would also regard the conduct to be Serious Anti-competitive Conduct under the Ordinance.

### **Information exchanged through a third party**

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#### **Hypothetical Example II**

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Central is provided with the confidential information by Connaught on the express basis that it should be disseminated to Connaught's competitors and acted upon accordingly. Central clearly understands the intention behind Connaught's email and thus actively participates as the conduit for the sharing of future pricing intentions. Central's role and the various confirmations received from the other retailers has removed the inherent uncertainty in competitive markets. Connaught feels confident that its price rise will be matched and therefore proceeds with the price rise.

### ***Agreements to exchange information which may have the effect of harming competition***

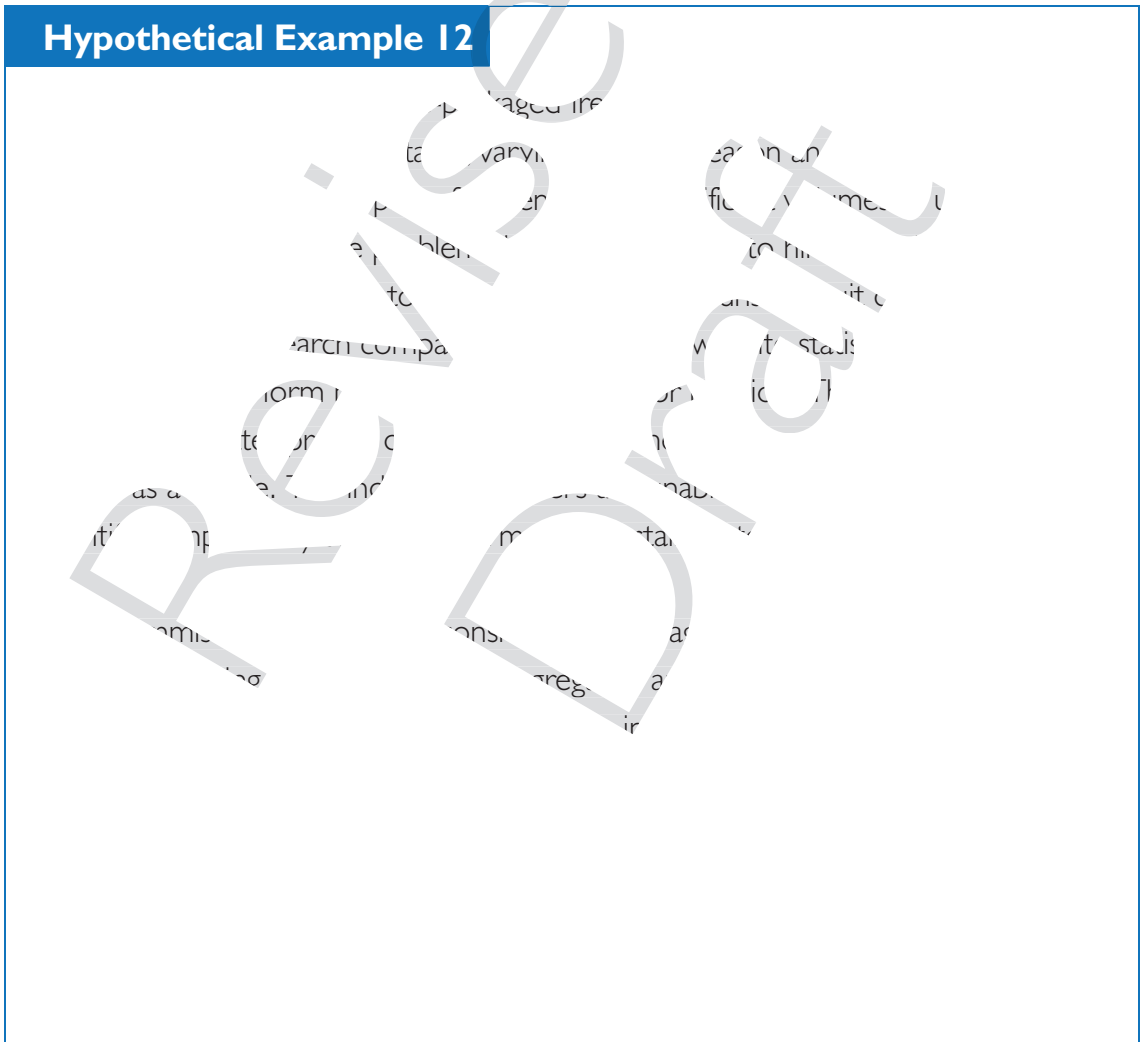
Information does not have the object of harming competition if the Commission will consider whether it might have that effect.

Whether or not the exchange of information gives rise to concern under the Conduct Rule depends on the circumstances of the case including the character of the market, the type of information exchanged (whether it is competitively sensitive), the nature of the parties concerned, and the nature of the information.

6.46 As a general principle, the Commission is more likely to find that an agreement to exchange information is anti-competitive if the market is concentrated (i.e. the more concentrated the market, the more likely the Commission is to find that the agreement is anti-competitive). The Commission will also take into account the nature of the information exchanged, the nature of the parties concerned, and the nature of the information.

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## Hypothetical Example 12



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### Hypothetical Example 13

Companies active in a particular manufacturing industry in Hong Kong rely on a variety of specialist recruitment agencies to source staff from overseas. HireMe Ltd recently entered the market with a new and innovative business model. HireMe acts as an intermediary consolidating the services of the different specialist agencies active in the supply of candidates to industrial clients. The HireMe business model aims at giving its clients the option of a “one stop shop” so that they can avoid dealing directly with the different specialist agencies. HireMe aims to cater for the totality of its clients’ hiring needs.

After HireMe entered the market, the major recruitment agencies in Hong Kong arrange a conference call to discuss the impact of HireMe and their shared concern that HireMe is causing instability in the market. During the call, the agencies agree to immediately terminate all existing contracts with HireMe and to refrain from entering into further contracts with the company. They undertake to ensure that their overseas branches do likewise. This agreement limits HireMe’s ability to function as a “middle man” between the agencies and its customers.

The recruitment agencies' conduct amounts to an agreement to boycott a competitor with a view to excluding that competitor from the market. The Commission would consider the agreement as having the object of harming competition. The agreement is unlikely to satisfy the terms of the general exclusion for agreements of overall economic efficiency in section 1 of Schedule 1 to the Ordinance.

The Commission would also consider the conduct in the example to be Serious Anti-competitive Conduct within the meaning of point (c) of the definition of Serious Anti-competitive Conduct in the Ordinance.<sup>30</sup>



***Terms of membership of associations which may give rise to competition concerns***

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***Certification practices having the object or effect of harming competition***

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### Hypothetical Example 14

For many years a local professional body organised a certification scheme such that members were able to advertise themselves as “endorsed” by the professional body. Consumers consider the existence (or absence) of such an endorsement as a key consideration in their choice of service provider. The professional body recently decided to change its membership requirements to include a minimum turnover threshold for members to remain eligible for membership. The new requirements were discussed at a meeting at which only a few (larger) members attended, and where concerns were expressed that certain smaller members were offering “low quality” services and engaging in “low pricing” conduct. As a result of the new requirements, a number of smaller members were no longer eligible for membership and began to lose a significant proportion of their existing customers as they could no longer claim to be “endorsed”.

This scenario raises concerns under the First Conduct Rule. The change to the rules is on its face discriminatory and seems intended to exclude smaller market participants from membership of the professional body with the result that they are placed at a competitive disadvantage. The rule change may force some of the smaller companies to cease trading altogether potentially allowing the larger competitors to raise their prices. The Commission will be likely to consider the rule change as having the object of harming competition. Thus, the professional body and/or members who made or gave effect to the decision may contravene the First Conduct Rule.

The Commission would also consider the conduct in the example to be Serious Anti-competitive Conduct under the Ordinance.

### ***Standard terms which may raise a concern under the First Conduct Rule***

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standards from accessing its standard terms and conditions. If a firm enters the market, the Commission will likely consider the object of harming competition. Standard terms (including terms which recommend prices) will also be considered as having the object of harming competition.

As a general proposition, standard terms and conditions are not automatically considered to be a concern under the Fair Trading Act. The standard terms and conditions is open and the standard terms and conditions are available to all participants. The standard terms and conditions define the scope or nature of the product sold (for

### Hypothetical Example 15

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These standard terms relate to the scope of the product sold to consumers and may therefore raise a concern under the First Conduct Rule. That said, harm to product variety, if any, appears limited as the affected insurance policies are still tailored to individual customer needs. The standard terms entail efficiencies as they allow consumers to compare the various products on offer; facilitate switching between insurers and facilitate market entry. Competition is therefore enhanced by the standard terms. Overall, even if the adoption of the standard terms has a harmful effect on competition, there appears to be a plausible efficiency justification under section 1 of Schedule 1 to the Ordinance.

### ***Standardisation agreements under the First Conduct Rule***

**Resale price maintenance**

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RPM can be achieved indirectly by for instance  
a maximum level of discount the distributor  
supplier might also make  
subject to the observation

### Hypothetical Example 16

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The Commission would view this arrangement as having the object of harming competition. HomeStore's insistence on CleanUpCo introducing a fixed retail price across Hong Kong has an inherent ability to harm competition. In this scenario, the purpose of the arrangement is merely to protect HomeStore from the competitive pricing of its competitors. In addition, there would be unlikely to be sufficient justifications for the RPM practice to satisfy the terms of the general exclusion for agreements enhancing overall economic efficiency in section 1 of Schedule 1 to the Ordinance.

The Commission would also consider the RPM in the example to be Serious Anti-Competitive Conduct under the Ordinance.

### **Hypothetical Example 17**

NailCo, a leading manufacturer of nails and screws for DIY and construction purposes sells its products in Hong Kong through independent retail stores. NailCo requires each of the stores to sell its products at a price stipulated by NailCo. NailCo justifies its pricing policy as a means of ensuring an orderly market and to avoid customer confusion as a result of differing prices for NailCo products across Hong Kong. NailCo also claims the arrangement affords retailers a healthy profit margin.

The Commission would view this arrangement as having the object of harming competition.

NailCo's justifications for the RPM practice will not be likely to satisfy the terms of the general exclusion for agreements enhancing overall economic efficiency in section 1 of Schedule 1 to the Ordinance. These justifications appear merely to suggest that RPM is a good way of keeping prices high. The argument that RPM avoids confusing customers amounts to an assertion that price competition is harmful for consumers. Price is the key parameter of competition and price competition is central to the regime established by the Ordinance.

For example, where a supplier introduces a new product,  
to induce distributors to better take  
product during  
might incentivise increased sales or promotional effort

### Hypothetical Example 18

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Even assuming that the RPM in this case might be assessed as having either the object or effect of harming competition, the parties may be able to bring forward evidence of economic efficiencies under section 1 of Schedule 1 to the Ordinance. In particular, given that the fixed resale price is for a short introductory period, it may be considered important to allow a new product to establish itself in the market. From this perspective, the fixed price encourages retailers to stock the product, increase sales through promotional activities and thus expands overall demand thereby improving distribution in the market with consumers likely to be afforded a fair share of these benefits. The absence of market power on the part of the supplier suggests that the practice is unlikely to eliminate competition in the relevant market. Consequently, the general exclusion for agreements enhancing overall economic efficiency appears likely to apply on the facts.

### ***Recommended or maximum prices***

Where a supplier merely recommends a resale price to a distributor or reseller to respect a maximum resale price, the Commission is unlikely to find the Commission to have the object of harming competition.

Instead, an agreement which entails recommended or maximum prices is subject to an analysis of its effects on competition.

When a supplier enters into a recommended or maximum price agreement, it may be able to demonstrate that the agreement is necessary to establish a new product in the market. Suppliers may also demonstrate that the agreement is necessary to establish a new product in the market. Suppliers may also demonstrate that the agreement is necessary to establish a new product in the market.

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***Efficiency justifications for vertical price restrictions***



et access

exclusive customer allocation agreements will not generally  
be considered anti-competitive. For the  
purpose of this section, these types of agreement will gener-  
ally not be considered to have anti-competitive effects on competition in the relevant mar-  
ket, and inter-brand competition  
will not be considered to be affected by territorial and/or customer sales limitations, and whether exclusiv-  
e distribution or exclusive customer allocation agreements are in the markets impacted by the agreement.

If an exclusive distribution or exclusive customer allocation agreement is considered to  
have an anti-competitive effect, the Commission may, if less than  
the Commission is satisfied that the agreement is necessary for the  
exclusion for agreements enhancing or maintaining competition,  
Schedule I to the Ordinance, or otherwise, to require the  
agreement to be modified or terminated.

The Commission may also, if less than  
the Commission is satisfied that the agreement is necessary for the  
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### Hypothetical Example 19

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### ***Production joint ventures***

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## Hypothetical Example 20

Two leading suppliers of an industrial chemical product in Hong Kong, Company A and Company B, decide to close their existing independent production facilities, and open a more efficient joint plant solely for use by A and B. Company A and B do not agree on any terms beyond those strictly limited to the running of the new facility. There are only two other competitors, C and D in the market who are running their plants at full capacity. Company B already has an existing joint venture with C. Costs of production are a significant proportion of the variable costs of the companies active in the market. The market has not seen any recent entry.

In assessing whether the creation of the joint production facility would give rise to concerns under the First Conduct Rule, the Commission would consider:

- the existing market structure and the state of competition in the market;
- whether the agreement enhances the commonality of costs of Companies A and B; and
- whether competition (on price) would likely be softened in the market as a result of the joint venture.

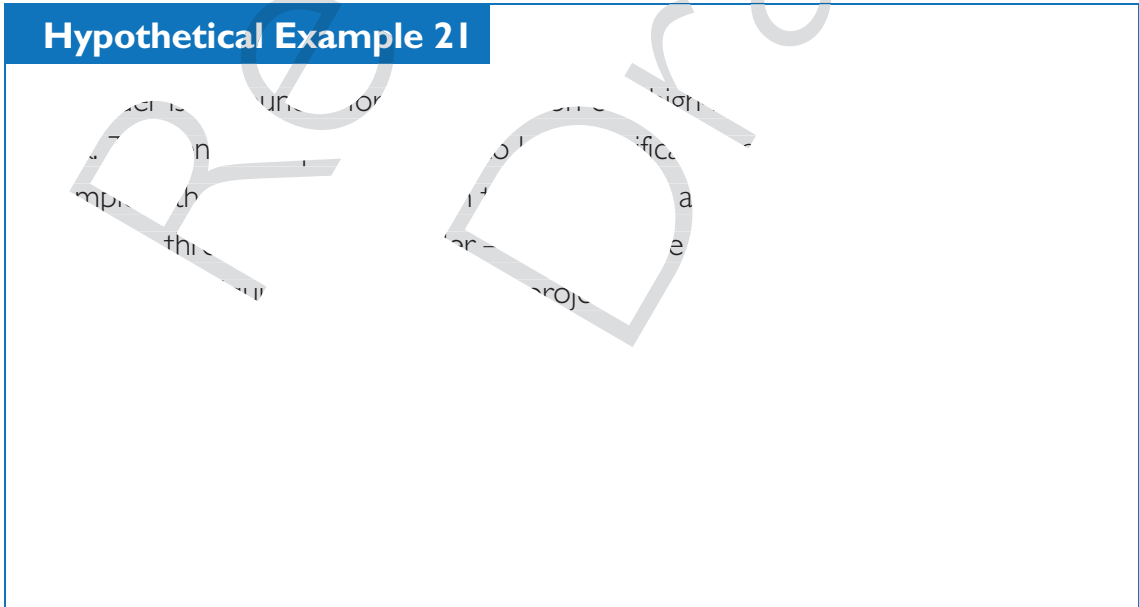
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set out in section 1 of Schedule 1 to the Ordinance.

### **Joint tendering**

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participation by companies which w  
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to submit more competitiv

6.104

### Hypothetical Example 21





Tung and Chung therefore submitted a joint-bid which allowed them to combine their resources to deliver the required project. The bid makes it clear they are submitting a joint tender, which transpires to be one of the lower prices submitted. Six other bids were submitted by larger construction companies who in the past five years have won the vast majority of the tenders for similar sized projects.

Assuming the creation of the TungBuild/ChungConstruct joint venture does not amount to a merger the arrangement may be assessed under the First Conduct Rule. In that regard, the joint venture does not have the object of harming competition and appears unlikely to give rise to anti-competitive effects. The fact that Tung and Chung could not individually bid for the project is particularly relevant here – they are not in fact competitors *for the project* in issue. The collaboration results in enhanced choice for the party organising the tender and a more competitive bidding process overall.

Nonetheless, Tung and Chung would need to be careful that any competitively sensitive information they share in submitting the bid and in carrying out the joint venture is used strictly for the purposes of the joint venture and that the joint venture is not used as a vehicle for exchanging commercial information on their usual prices and costs.

### ***Joint selling, distribution and marketing***

... a wide range

... to joint

...).

... es

... or

... range

... vice, h

sales-related joint ventures can give  
Rule where they lead to prevention  
of competition

6.110

### Hypothetical Example 22

*[The content of this section is obscured by a large, diagonal watermark reading "REVISIONS".]*

...ve ... ty to

...ing competition, such

...icient to satisfy the terms of the exclusion

...iciency in section 1 of Schedule 1 to

this might be the case where the joint v

...gies and/or economies of scale or scope

ements in product range or quality

### Hypothetical Example 23

In order to reduce distribution costs and enhance access to a wider range of customers, a group of local microbreweries agree to set up a single distribution and delivery centre. Each of the breweries contributes their existing delivery staff and vehicles to the centre.

An arrangement of this kind would be unlikely to give rise to concerns under the First Conduct Rule. The scope of the cooperation is limited to one discrete aspect of the commercial activities of the parties and seems unlikely to require the parties to share competitively sensitive information, beyond the identity of customers which in any event is necessary for the purposes of implementing the collaboration. In particular, the parties remain free to set their own prices. Furthermore, although the parties transport costs might be harmonised by the arrangement, other significant input costs (e.g. ingredients, brand investment, marketing, and production) will continue to vary across the breweries and there remains ample room for competition on product quality.

## Franchise arrangements

Franchise arrangements are a common method of distribution of products in Hong Kong.

6.116

***Maintaining the identity and reputation of the franchise network***

## ***Protecting the franchisor's branding and know-how***

...mination of  
franchise on opening the same kind of shop in an area where it might compete with  
franchise agreement are inherent in the nature of  
(... to a legitimate commercial purpose)  
is under the...st Conduct Rule.

businesses sell their products to end consumer...  
s chosen on the basis of particular cr...  
s from reselling the products concern...

Selective distribution systems are a common f...  
particularly as regards the sale of br...  
often economically...  
In par...ive...tabl...

## ***Qualitative criteria for establishing a selective distribution system***

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non-discriminatory qualitativ  
the product or the suitability of their premises to protect the br  
product;

***Other conditions in a selective distribution system***

# Annex

## Exclusions and Exemptions from the First Conduct Rule

### I Introduction

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- 1.1 An exclusion or exemption from the First Conduct Rule applies to a person's conduct where the person is excluded or exempted from the First Conduct Rule. An exclusion or exemption applies where their conduct has the object or effect of harassment, or where they are taking steps to apply to the Commission in order to challenge a particular exclusion or exemption. Under the First Conduct Rule, a person's conduct is excluded or exempted if it falls within the terms of a particular exclusion or exemption. A person's conduct may also be excluded or exempted if the person has taken steps to apply to the Commission in order to challenge a particular exclusion or exemption.
- 1.2 A person's conduct is excluded or exempted from the First Conduct Rule if the person's conduct falls within the terms of a particular exclusion or exemption. A person's conduct may also be excluded or exempted if the person has taken steps to apply to the Commission in order to challenge a particular exclusion or exemption.
- 1.3 However, a person's conduct is not excluded or exempted from the First Conduct Rule if the person's conduct falls within the terms of a particular exclusion or exemption, but the person has not taken steps to apply to the Commission in order to challenge a particular exclusion or exemption.

Schedule I to the Ordinance provides for the following Conduct Rule:

- (a) agreements enhancing or

## 2 Agreements Enhancing Overall Economic Efficiency



***The agreement contributes to improving production or distribution or promoting technical or economic progress***

Efficiency exclusion requires an assessment of the claimed contribution to improving production or distribution. The term “efficiencies” refers to contributions to improving production or distribution that are technical or economic progress.

An undertaking relying on the efficiency exclusion must demonstrate each of the following:

- (a) the claimed contribution is a technical or economic progress;
- (b) the claimed contribution is a technical or economic progress.

...e efficiencies arise when agreements betw  
...iciencies in the form of quality impro  
improvements.  
advances brought about when under

***Consumers receive a fair share of the efficiencies***

***The agreement does not impose on the undertakings concerned restrictions that are not indispensable to the attainment of the relevant efficiencies***

...ate that the ... are ... e factor in this context ... ictions in it make it ... ould likely have been ... the case in the absence of the agreement or the restrictions.

This third condition implies that as regards the agreement there be no other ... le and less restrictive means of achieving the eff ... w that the agreement is reasonab ... e ... ust then demonstrate that the individual restr ... are also reasonably necessary in order to produce the eff ... iction can be considered indispensab ... eliminate or significantly ... that they will mater ...

**Hypothetical Example 24**

...inks ... is ... n ... sh ... and ... H ...

Given the market position of DrinkCo and the coverage of the restrictive arrangements, the exclusive purchasing agreement seems unlikely to be considered indispensable. The exclusive purchasing obligation exceeds what is reasonably necessary to plan production and/or achieve the other claimed efficiencies. The 7 year term is also not likely to be indispensable and/or the efficiencies generated are unlikely to compensate for the foreclosure effects of an exclusive purchase arrangement of that duration.

***The agreement does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question***

vices in question.

### **Hypothetical Example 25**

Airlines A and B, have together more than 70% of the passenger traffic on the route between destination X and Hong Kong. A and B agree to coordinate their schedules and certain of their tariffs on the route in the context of a codeshare arrangement. Following the agreement, prices rise by between 30% and 50% for the various fares on the route. There are three other airlines operating on the same route, the largest, a low cost carrier, has about 15% of the passenger traffic on the route. The other two carriers are niche operators. There has been no new entry in recent years and the parties to the agreement did not lose significant sales following the price increases. The existing competitors brought no significant new capacity to the route and no new entry occurred.

In light of the market position of the parties and the absence of competitive response to their joint conduct, it might reasonably be concluded that the parties to the agreement are not subject to any significant competitive pressures. It is more likely that in such a market where competition is already weak, the relevant agreement may afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the services in question and therefore reliance on the efficiency exclusion is misplaced.

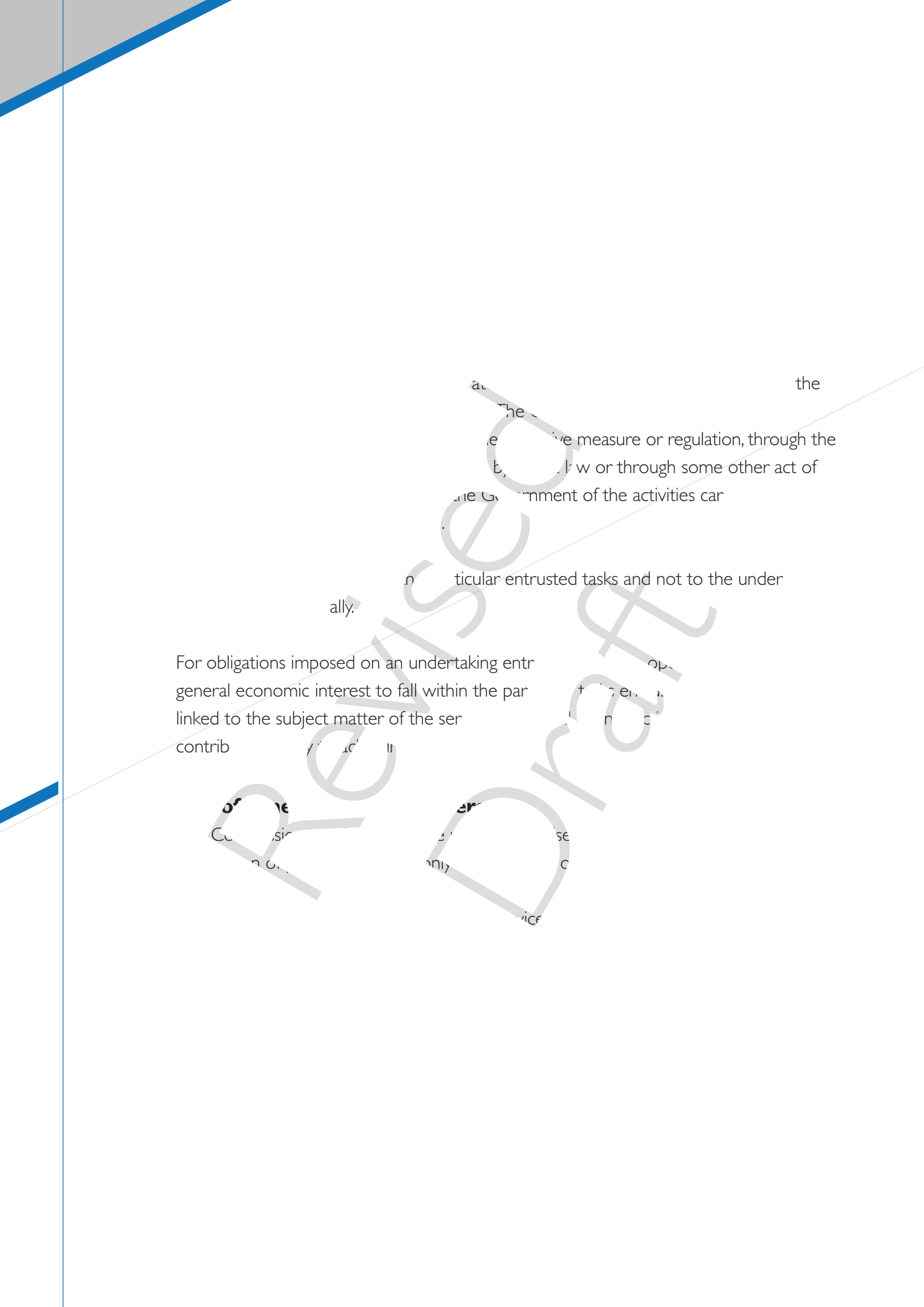
### **3 Compliance with Legal Requirements**

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Section 2 of Schedule I to the Ordinance pro  
excluded from the Fir

### **4 Services of General Economic Interest**

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linked to the subject matter of the ser...  
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REVISION DRAFT

be considered a service of general economic interest,  
available and not restr  
services aimed a par  
group or a remote locality

## 5 Mergers

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art 6 of this

## 6 Agreements of Lesser Significance

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Section 5 of Schedule 1 to the Ordinance contains a general

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st Conduct Rule does not apply to:

an agreement between unde

(b)

combine takeover of takings to

( ) union, or

decision of

incia er p

al exclusion for agreements of lesser signif  
agreement is considered Ser

Additional r

## 7 Block Exemption Orders

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## 8 Public Policy and International Obligations Exemptions

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wing an application

Special Investigation Exemption order  
will be made available on the Commission

## 9 Statutory Bodies, Specified Persons and Activities

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Section 3 of the Ordinance provides for  
statutory bodies.<sup>48</sup> Under section 3,  
rules (including the Financial Reporting  
scope of those rules) will be made available on the Commission

Section 4 of the Ordinance provides that the competition r  
Conduct Rule) do not appl  
Executive in Council under section 5 of the Ordinance or to per  
specified in such a regulation.

Revised  
Draft

