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For Immediate Release

**Competition Commission outlines further arrangements for dealing with Applications**

The Competition Commission (Commission) has provided further information in respect of arrangements for dealing with Applications for a Decision under Sections 9 and 24 of the Competition Ordinance (Ordinance) and Applications for a Block Exemption Order under Section 15 of the Ordinance (Applications).

*Background*

The Ordinance allows undertakings to make Applications to confirm whether their conduct or arrangements are exempted or excluded from the Ordinance. There is no requirement for undertakings to apply to the Commission in order to benefit from a particular exclusion or exemption. The Commission expects that many parties will “self-assess” their existing conduct and arrangements to determine whether an exemption or exclusion applies, and decide not to make an Application.

However, some parties have expressed an interest in making an Application as soon as possible after the remaining provisions of the Ordinance come into force. The Government has gazetted a commencement notice for the Ordinance to come into full effect on 14 December 2015.

In July 2015 the Commission confirmed it would not accept Applications before the date of full commencement. However, the Commission indicated that if parties intended to make an Application on the date of full commencement (or shortly thereafter) the Commission is prepared to enter into preliminary discussions with the parties in advance of 14 December 2015.

The Commission has since received inquiries about the transitional arrangements following the date of full commencement of the Ordinance for conduct covered by an Application.

In particular, parties have inquired whether existing conduct or arrangements which are the subject of an Application made at the date of full commencement (or shortly thereafter) can be the subject of Commission enforcement action during the period between 14 December 2015 and the date of the Commission’s determination of the Application.

The Ordinance contemplates that Applications would be made before conduct or arrangements are put into effect. However, the Commission recognises that this is not possible in respect of long term arrangements already in place on 14 December 2015. The Ordinance does not contain any transitional provisions applying in these circumstances.

### Further arrangements for dealing with Applications

The Commission has today announced that it may, in specific cases, indicate to Applicants that it would be unlikely to initiate enforcement action in respect of conduct or arrangements already existing at the date of full commencement of the Ordinance while it is considering an Application in respect of that conduct or the relevant arrangements.

While the Commission will consider whether it will give such an indication on a case by case basis the factors that the Commission will take into account include:

- That the parties have provided reasons to the satisfaction of the Commission as to why they require an indication from the Commission that it would be unlikely to initiate enforcement action;
- That the parties progress their Application in good faith including by responding in a timely manner to requests from the Commission for further information;
- That the Application on its face does not concern cartel conduct<sup>1</sup> which is unlikely to satisfy the terms of section 1 of Schedule 1 to the Ordinance (*Agreements enhancing overall economic efficiency*);
- Whether the Commission is already inquiring into or investigating the conduct or arrangements covered by the Application; and
- That the Commission does not discover the existence of anti-competitive conduct relating to the conduct covered by the Application but which has not been fully disclosed in the Application.

The Commission will publicise any indication given to Applicants under the terms of these transitional arrangements.

The Commission will reconsider these transitional arrangements after the Ordinance has been in full effect for six months.

Any parties who wish to discuss proposed Applications or have any further questions about the Applications process are encouraged to contact the Commission. Prospective applicants should also refer to the Commission's Guideline on *Applications for a Decision under Sections 9 and 24 (Exclusions and Exemptions) and Section 15 Block Exemption Orders*.

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<sup>1</sup> For an explanation of cartel conduct see paragraph 3.7 of the Commission's *Guideline on the First Conduct Rule*.