

Proposed recommendation to Government for fees payable under the Competition Ordinance in respect of applications

The Competition Commission (“the Commission”) is now collecting views on its proposed recommendation to the Government in respect of fees to be prescribed by regulations made under Section 164 of the Competition Ordinance (Cap 619) (“the Ordinance”).

Section 164 of the Ordinance provides that the Commission may charge a fee for the making of an application to the Commission under the Ordinance. Parties may make applications for the following under the Ordinance:

- (1) Decisions under Section 9 or Section 24 confirming whether an agreement or conduct is covered by an exclusion or exemption from the conduct rules (“Applications for a Decision”);
- (2) Decisions under Section 11 of Schedule 7 confirming whether a merger is covered by an exclusion from the merger rule (“Merger Decision Applications”); and
- (3) Block exemption orders for certain categories of agreement under Section 15 (“Block Exemption Applications”).

Proposed recommended fees

The Commission has carefully considered fees payable to other authorities in Hong Kong, fees charged by competition authorities in other jurisdictions in respect of similar applications to those described at points (1) to (3) above and has conducted preliminary discussions with various parties on the possibility of prescribing fees under the Ordinance. The Commission has also taken account of the likely resources involved in dealing with applications under the Ordinance, having regard to the Government’s policy that fees and charges payable to the public authorities should generally uphold the “user pays” principle.

The Commission proposes to recommend the following level of fees to Government for inclusion in regulations made under Section 164 of the Ordinance:

- In respect of Applications for a Decision, the Commission proposes to recommend a two tier system of fees:
 - For applications in respect of all exclusions and exemptions except the exclusion in Section 1 of Schedule 1 of the Ordinance, the fee would be \$50,000;
 - For applications in respect of the exclusion in Section 1 of Schedule 1 of the Ordinance (exclusion for agreements enhancing overall economic efficiency) the fee would be \$100,000.

This two tier arrangement recognises that applications in respect of Section 1 of Schedule 1 of the Ordinance are likely to be more complex and require more Commission resources than for other Applications for a Decision.

Where parties make an application in respect of the exclusion in Section 1 of Schedule 1 of the Ordinance and other exclusions or exemptions under the Ordinance, the fee payable would be a combination of the two fees referenced above.

- In respect of Merger Decision Applications, the Commission proposes to recommend a fee of \$500,000.
- In respect of Block Exemptions Applications, the Commission proposes to recommend a fee of \$500,000.

Discretion to reduce, waive or refund fees

Section 164(4)(d) of the Ordinance states that regulations made under Section 164 may provide for the reduction, waiver or refund, in whole or in part, of any fee, either upon the happening of a certain event or in the discretion of the Commission. The Commission proposes to recommend that the Government provide for a discretion on the part of the Commission to reduce, waive or refund fees in the regulations the Government makes under Section 164.

The Commission proposes to publish guidance outlining the criteria it would take into account in exercising this discretion. Relevant factors likely to be considered by the Commission would be the appropriateness of waivers or reductions for small and medium sized businesses and not-for-profit entities and the extent of general public interest arising from the application.

Invitation for comments

Comments on this proposal should be sent in writing to guidelines@compcomm.hk by Friday 17 April 2015.

Note: The Communications Authority (“CA”) has concurrent jurisdiction in respect of the conduct of certain undertakings operating in the telecommunications and broadcasting sector. References to the Commission are also references to the CA where applicable.