

**Commission on Strategic Development  
Committee on Economic Development and  
Economic Cooperation with the Mainland**

**Report of the Competition Policy Review Committee**

**Purpose**

This paper introduces the key findings of the Competition Policy Review Committee (CPRC), whose report has been sent to members under a separate cover on 4 July. The CPRC's recommendations are summarised in section 2 of the report.

**Background**

2. In his 2005-06 Budget Speech, the Financial Secretary announced that the Competition Policy Advisory Group (COMPAG) would appoint an independent committee to review the existing competition policy and the composition, terms of reference and operations of COMPAG. COMPAG subsequently appointed the CPRC in June 2005. The Committee's membership is at Attachment A to the report, and its terms of reference were –

- to review COMPAG's composition, functions and modus operandi, including its mechanism and practice in dealing with competition related issues and complaints; and
- to review the Government's competition policy and the implementation thereof.

**Present Position**

3. The CPRC submitted its report to COMPAG at the end of June, and COMPAG asked that the report be published early for public information. In the meantime the Government is carefully considering the recommendations

of the CPRC, with a view to drawing up a public discussion document based on the report and the Government's initial views on a viable way forward for competition policy.

### **Issues considered by the CPRC and Summary of Key Findings**

4. The CPRC has reviewed international experience in the formulation and application of competition law, and has been briefed by experts in this area from other jurisdictions. It has also studied the local sector specific competition regulatory regimes for the telecommunications and broadcasting industries.

5. In the course of its review, the CPRC has focused primarily on the following issues –

- (a) whether there is a need for legislation to support and enhance Hong Kong's existing competition policy; and
- (b) the regulatory framework for competition and the role of COMPAG in the future regulatory regime.

### *Legislation to Support Hong Kong's Existing Competition Policy*

6. In considering the need for new legislation to support competition policy, the CPRC has taken the view that any new approach should serve the established policy objective of enhancing economic efficiency and the free flow of trade, thereby also benefiting consumer welfare. The aim should not be to target or to benefit specific sectors, nor to stimulate or introduce competition artificially, but rather to reinforce business and consumer confidence and enhance Hong Kong's pro-enterprise, pro-market environment.

7. Having reviewed local and overseas competition models, the CPRC has concluded that without appropriate legislative backing it is difficult to combat anti-competitive practices effectively. It therefore proposes that a new competition law be introduced, and that such a law –

- should **not** seek artificially to introduce competition, but should aim to deter and sanction specific types of anti-competitive conduct;
- should **not** seek to intervene in markets or benefit particular sectors by targeting “natural” monopolies<sup>1</sup> or mergers and acquisitions;
- should be cross-sector in nature, rather than singling out certain sectors of the economy; and
- should allow for exemptions to be made where so merited on public policy or economic grounds.

8. As regards the scope of the anti-competitive conduct to be covered by the proposed new law, the CPRC recommends that this be based on the specific types of conduct set out in the current COMPAG guidelines, namely -

- Price-fixing
- Bid-rigging
- Market allocation
- Sales and production quotas
- Joint boycotts
- Unfair or discriminatory standards
- Abuse of a dominant market position (such as predatory pricing).

---

<sup>1</sup> In economics, natural monopoly arises when economies of scale provide a large cost advantage to having all of an industry’s output produced by a single firm. Given that in this situation the “natural monopolies” have arisen simply as a result of market forces rather than any anti-competitive behaviour, the CPRC considers that they should not be a target of the proposed competition law.

9. The conduct in question would have to be shown to have had the intent or effect of distorting the normal operation of the market before it would be subject to sanction. In addition, there would be a need for detailed guidelines to explain the potential scope of the offences and to advise on how businesses might avoid falling foul of the new provisions. The CPRC recommends that at this stage the new law should not regulate “natural” monopolies or mergers and acquisitions.

### *Regulatory Procedures*

10. In considering the establishment of an effective regulatory framework, the CPRC has recognised the need for the relevant authority to have investigative powers that would allow for a full and fair investigation of possible cases of anti-competitive conduct. The law would need to provide for sanctions that would have a clear deterrent effect, and there should be appropriate checks and balances, including an appeals channel, to guard against abuse of regulatory power. The regulatory authority would also be expected to ensure that education and publicity programmes were put in place so as to raise public awareness of the importance of fair competition to the proper functioning of market forces.

### *The Regulatory Authority*

11. The CPRC recommends that a Competition Commission, consisting of a governing board and a full-time executive office, be established as the regulatory authority responsible for enforcing the new law. The CPRC has considered whether the Commission should be responsible not only for investigating cases of potential anti-competitive conduct, but also for adjudicating on and sanctioning such cases. It has discussed the option of establishing a Competition Tribunal to adjudicate on cases and to hand down sanctions, and recommends that the Government seriously consider this option. The CPRC also recommends that, regardless of whether the sanctions are ultimately handed down by a Tribunal or by the Commission itself, these should be limited to civil penalties. A chart showing the various stages of the proposed regulatory process is at Attachment D to the report.

## *Role of COMPAG*

12. The CPRC has considered how COMPAG might be strengthened both in terms of membership and remit, to allow the Group to take a more direct and robust approach to handling complaints and assessing competition in specific sectors. However, as its report recommends establishing a new regulatory regime backed by legislation, under which the Competition Commission would take over the work done by COMPAG, the CPRC considers that it is unnecessary to make recommendations on the future role of the group.

## **Way Forward**

13. The CPRC recognises that the issue of regulating competition is complex, and that the pros and cons of adopting the recommended approach would need to be clearly explained to the public. Whilst some stakeholders have expressed support for the setting up of a competition regulatory regime, others, for example in the business community, have expressed reservations about the possible effect of a cross-sector competition law on business practices in Hong Kong.

14. The CPRC therefore suggests, and the Government agrees that we should engage the public in a thorough process of consultation before deciding whether or not there is a need to draft a new competition law. The engagement process should be transparent, should aim to involve a wide range of stakeholders, and should “reach out” as far as possible, through events such as forums and public workshops, so as to ensure that the views gathered would be representative of the opinion of the community at large.

15. To allow time for the preparation of the consultation document and organisation of events, we envisage that the engagement process for this issue could start in the final quarter of 2006.

Economic Development and Labour Bureau  
August 2006