



Asia-Pacific
Economic Cooperation

2007/SOM3/EC/031

Agenda Item: 1

Report Back from Hong Kong, China on the Latest Policy Developments Relating to APEC-OECD Integrated Checklist on Regulatory Reform

Purpose: Information
Submitted by: Hong Kong, China



**Economic Committee Meeting
Cairns, Australia
28-29 June 2007**

***Report back on the latest policy developments relating to
APEC-OECD Integrated Checklist on Regulatory Reform***

(Submitted by Hong Kong, China at ECII 2007)

Overview

Hong Kong, China (HKC) has recognized that regulatory reform is a central element in the promotion of open and competitive markets, and a key driver of economic efficiency and consumer welfare. As such, we completed a self-assessment in relation to the APEC-OECD Integrated Checklist (“Integrated Checklist”) in 2006. At this meeting, we inform the Member Economies of the Economic Committee of APEC about some of the policy developments since then.

2. To tailor with the focus of the Integrated Checklist, we primarily update Members on three individual policy areas, namely (a) regulatory regime and policies; (b) competition policy; and (c) market openness policies.

Regulatory regime and policies

3. HKC understands that regulatory reform is a dynamic and ongoing process that requires continual attention and that high level involvement is a critical factor for success in business facilitation programme. Last November, we launched the “Be the Smart Regulator” Programme, which aims at developing a model of best practices that can be replicated across licenses and departments. An action plan of short- to long-term measures to address the business community’s common concerns has been formulated. Under the Programme, we will measure our performance in regulatory activities and the regulatory impact on business, prepare plans to enhance licensing processes and communication with business, and devise measures to simplify regulations. The Programme was endorsed by the Chief Executive of Hong Kong, China and regular progress reports are submitted to his Office.

4. Besides, HKC also strives to cultivate a business facilitating culture in the civil service. As we mentioned in the Integrated Checklist self-assessment, the HKC Government has published a booklet to provide civil servants tasked with regulating HKC’s businesses with an overview of the challenges facing the regulators and with examples of good practice. Apart from internal training provided by the individual regulatory bodies to their respective regulators and decision makers, from time to time the Government provides the opportunities to its senior officials to attend external training courses and seminars on different topics, which also includes courses on managing regulation, enforcement and compliance.

Competition Policy

5. HKC firmly believes in, and supports, a free market economy and investment liberalisation. Market forces drive competition, transparency and equal treatment. Whilst the economy grows and becomes more sophisticated, codes of practice will gradually evolve.

6. As we have reported in the Integrated Checklist, the HKC Government established the Competition Policy Advisory Group (COMPAG) in 1997. We also

issued a statement clarifying that our policy objective is: “to enhance economic efficiency and free flow of trade, thereby also benefiting consumer welfare”. Since then, COMPAG has been responsible for vetting government policies and practices to ensure that they are not anti-competitive and for reviewing other competition policy matters, including complaints of anti-competitive conduct. In June 2005, COMPAG appointed the Competition Policy Review Committee (CPRC) to review the effectiveness of HKC’s competition policy. On completion of its review in June 2006, the CPRC recommended that HKC should introduce a cross-sector competition law targeting anti-competitive conduct and that such a law should be enforced by an independent Competition Commission. It also recommended that before beginning preparation of a new competition law, the Government should consult the public on the issues raised in the CPRC report.

7. Having taken note of the continuing interest in the community in the recommendations of the CPRC, and specifically the issue of whether or not HKC should introduce a general competition law, the Government of HKC issued a public discussion document last November, entitled “*Promoting Competition: Maintaining our Economic Drive*”, and invited views from stakeholders on the way forward for the implementation of the domestic competition policy. To promote public engagement, we held a public forum in November 2006; conducted briefings for the Legislative Council Panel on Economic Services, several District Councils and other public bodies; and took part in public forums, and programmes organised by the electronic media to explain the contents of the discussion document and to listen to the views of different sectors of the community. By the end of the three-month consultation period, we had received 114 written submissions, 76 pro forma submissions and a 1,200-signature petition.

8. Feedback received during the consultation period indicated significant support in the community for a cross-sector competition law and the establishment of a Competition Commission to enforce such a law. Many respondents pointed out that anti-competitive conduct could occur in any sector and it would not be fair to target only certain individual sectors or industries for regulation. The Government has also received very useful views on other important aspects, including checks and balances that should be in place when implementing the law, as well as on the powers that should be vested with the Competition Commission and on the importance of protecting confidentiality of information.

9. However, we have taken note that some respondents from the business sector (including some Small and Medium Enterprises (SMEs)) have expressed concerns that although the aims of such a law are to maintain a competitive environment, SMEs may become targets of complaints when the law is in place. At the same time, some respondents (including some from the business sector) have expressed concerns that such a law could lead to higher business costs and potentially costly and time-consuming litigation - although there are others in the business community who support the introduction of a cross-sector law on the grounds that it could encourage free market discipline and protect SMEs from anti-competitive conduct.

10. In view of the general support for introducing a cross-sector competition law and establishing a Competition Commission, the Government is now working on the preparation of a new competition law, having regard to the views expressed during the public consultation exercise. We envisage that the main aspects of the legislation

might include –

- (a) the definition of anti-competitive conduct to be covered and the introduction of an appropriate prohibition against such conduct;
- (b) the establishment of a Competition Commission as the regulatory authority;
- (c) a mechanism for exempting from the application of the law conduct that is considered to be in the wider economic or public interest;
- (d) provisions related to confidentiality and a leniency programme; and
- (e) the penalties that are applicable to a breach of the prohibition against anti-competitive conduct, refusal to cooperate with investigations or unauthorized disclosure of confidential information.

11. With the above considerations in mind, in taking forward the drafting of the new competition law, we would continue to engage the public to enhance their understanding of its content and implementation. We would also take into account the concerns that have been raised by some respondents (including the worries on the part of some SMEs) in our endeavour to draw up a regulatory framework that suits HKC.

Market Openness Policies

12. HKC subscribes to the basic economic philosophy of minimum government intervention and free play of market forces. In all practical circumstances, HKC's regulation, competition and market openness policies do not discriminate between like goods, services, or service suppliers in like circumstances, be they foreign or domestic. There are very limited and well defined situations where suppliers of goods and services are limited, and they are mainly involved in areas related to public health, safety, security and the environment, and they are required to fulfil their obligations under international agreements. We keep such measures under constant review with the objective to facilitate trade as far as possible. More importantly, all non-tariff measures are consistently applied with no discrimination between goods of different origin/different sources. As HKC does not impose any tariff, the issue of tariff measures is not relevant to HKC.

13. It is also HKC's policy to maintain liberal service and investment regimes. Most services sectors are free and open; foreign service providers and traders normally enjoy national treatment. Except under very special circumstances, there are generally no special legislation, regulations or administrative guidelines governing the admission and establishment of foreign investment in HKC. There is also no restriction on foreign exchange transactions, capital movement, or repatriation of capital and returns related to foreign investments. HKC will continue to exert concerted effort in preserving these open and liberal investment regimes and maintaining a level playing field for foreign and local investors alike.

(June 2007)