

3rd December, 2014¹
Your ref: CITBCR 05/62/43/8

Mr Sam Hui
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry) 2
Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
HKSAR Government
23/F., West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Mr Hui,

**Regulation for the Determination of Turnover of an Undertaking
Under the Competition Ordinance (Cap 619)**

We refer to your letter of 29th October, 2014 inviting comments on the captioned and would like to offer the following views for your consideration:-

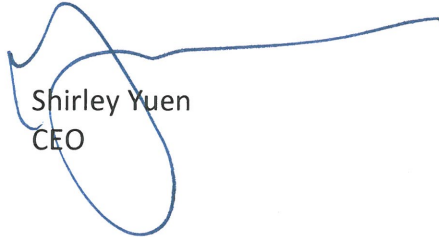
We wish to express concerns with the language regarding the definition of turnover for the purpose of pecuniary penalty as given in Part II of the Annex in your letter. Specifically, we note that this describes turnover '*obtained in Hong Kong*' as those including '*sales made from Hong Kong or sales made to Hong Kong*'. As such, we feel that the language is broader than that provided under Section 93.

It should be made clear that sales made from Hong Kong to places outside Hong Kong (i.e. export sales) are excluded from the definition. If export sales are included, then this exposes companies to the double jeopardy of potential fines in both Hong Kong and the overseas market in respect of those sales. Further, there is no rationale basis for fining based on sales to overseas markets as necessarily the fine is intended to reflect and be related to the harm caused in Hong Kong. Necessarily, where goods or services have been exported, any potential harm could only arise in the overseas market.

¹ This letter supersedes that of 26th November, 2014

We very much hope that your Bureau would consider appropriate drafting changes to rectify this apparent inconsistency. The Chamber acknowledges that this is a complex area and the Administration may consider deleting the words '*sales made from Hong Kong or sales made to Hong Kong*' and leaving it to the Commission's guidelines and case law for this issue to be settled.

Yours sincerely,

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Shirley Yuen
CEO