

**Twenty-ninth Meeting of
the Business Facilitation Advisory Committee**

***Agenda Item 4(a) : Report on the work of the
Wholesale and Retail Task Force***

Purpose

This paper reports on the work of the Wholesale and Retail Task Force (WRTF) since the last Business Facilitation Advisory Committee meeting held on 26 March 2015.

Work progress of WRTF

Implementation progress of the Competition Ordinance with relevance to the wholesale and retail sectors

2. The Competition Commission (the Commission) has briefed WRTF on the implementation progress of the Competition Ordinance (the Ordinance) including issues of particular relevance to the wholesale and retail sectors. At the invitation of WRTF, three members of the Hong Kong Retail Management Association attended the meeting to express their views.

3. WRTF is concerned whether franchise agreement which often stipulates uniform pricing of products, sourcing of supplies from designated suppliers and limiting the number of stores in a district will contravene the First Conduct Rule. The Commission has clarified that though this conduct appears to be anti-competitive, there are a lot of efficiency benefits in a franchise agreement such as limited investment and risk for franchisors. Overall, if the franchise restrictions are just typical ones, the pro-competitive efficiencies will usually outweigh the anti-competitive features and should not be a concern.

4. The Commission has also clarified that in most overseas jurisdictions, discriminatory conduct is regarded as unfair, but not anti-competitive. For Hong Kong, as the Ordinance is a competition law, discriminatory conduct itself will unlikely be a contravention or become a concern unless the discrimination has caused the market to become not competitive.

5. WRTF also expresses concern about the warning notices issued by the Commission without endorsement of the Competition Tribunal, which will adversely affect their reputation. The Commission has clarified that even after it has completed an extensive investigation of a case and found evidence of non-serious misconduct, the Commission cannot take the case to the Competition Tribunal, but instead is required to issue warning notices to the undertakings first. Hence, the issue of a warning notice means that the Commission is convinced there is a case of misconduct. The publication of warning notice will help the business sector and the public to understand the Commission's stance on a particular case.

6. WRTF appreciates the Commission's clarifications and will continue to monitor the implementation of the Ordinance.

Food and Drugs (Composition and Labelling) (Amendment) (No.2) Regulation 2014

7. The Centre for Food Safety (CFS) has briefed WRTF on the key features of the Amendment Regulation regarding the nutritional composition and nutrition labelling requirements for formula products and prepackaged food for infants and young children. The new requirements will come into effect on 13 December 2015 for infant formula and on 13 June 2016 for follow-up formula and prepackaged food.

8. In anticipation that there will be difficulties in fitting the required information onto small-sized packages, exemption from nutrition labelling requirements can be granted to formula products and prepackaged food packed in a container with total surface area of less than 250cm² and 100cm² respectively. To facilitate the traders to make preparation for the new requirements during the grace period, CFS has published two sets of guidance notes on technical details such as tolerance limits, rounding rules, recommended formats of labelling and testing methods.

9. WRTF welcomes the business facilitation approach taken by CFS.

Measures to facilitate the change of tablet coating material of proprietary Chinese medicine

10. At the WRTF meeting held in October 2014, the trade representative had requested the Department of Health to consider introducing measures to facilitate the trade to switch the tablet coating material of proprietary Chinese medicine (pCm) from sugar coating to polymer coating.

11. In response, the Chinese Medicines Board of the Chinese Medicine Council of Hong Kong has subsequently allowed flexibility in the application process subject to certain conditions without compromising the protection of public health. It is no longer necessary to apply for formal registration of pCm and approval to change the coating material at the same time; and only the general stability test report of pCm at year 0 is required for submission of the application for change of the coating material while the reports at the remaining years can be produced when applying for formal registration or renewal registration.

12. WRTF welcomes the above measures which can facilitate the trade to introduce improvement to their products in a timely manner.

Way forward

13 Members are invited to note the work progress of WRTF. The Task Force will continue to monitor the development of the above issues.

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