

WHARF T&T LIMITED

Submission in response to Draft Cartel Leniency Policy

23 October 2015

Wharf T&T Limited (“WTT”) is pleased to provide its comments on the “Draft Leniency Policy for Undertakings Engaged in Cartel Conduct” (“Draft Policy”) issued by the Competition Commission (“Commission”) on 23 September 2015.

Concurrent jurisdiction of the Communications Authority

The Draft Policy is issued solely by the Commission.

The remarks from the Commission’s “Guide to the Draft Leniency Policy for Undertakings Engaged in Cartel Conduct” issued in conjunction with the Draft Policy state that:

“While the Commission is the principal competition authority responsible for enforcing the Ordinance, it has concurrent jurisdiction with the Communications Authority (“CA”) in respect of the anticompetitive conduct of undertakings operating in the telecommunications and broadcasting sectors.

“At this stage, the CA has an open mind as to whether it should adopt, whether on its own or jointly with the Commission, a leniency policy and, if so, when that should take place. The CA would invite views on these matters from the broadcasting and telecommunications licensees. The CA would also welcome submissions received in this consultation from the broadcasting and telecommunications licensees with respect to the Commission’s Draft Cartel Leniency Policy in deciding on the way forward in that regard.”

WTT supports a deferring consideration by the CA and believes it is the most prudent approach at this stage. WTT submits that a deferral would have the benefit of enabling the CA and all concerned telecommunications and broadcasting licensees to evaluate the experience of the Commission in handling competition laws including leniency matters, before deciding on the eventual approach for the telecommunications and broadcasting industry.

WTT points out that the telecommunications industry has been subject to anti-competition requirements in the licence conditions and subsequently in the Telecommunications Ordinance and the former Telecommunications Authority and the CA to date has never had a leniency policy. Therefore deferral would maintain the status quo and enable the CA to decide to adopt a leniency policy only where the empirical evidence firmly supported it.

WTT believes that it would be prudent for the CA to revisit the issue in twelve months’ time.

In light of the above, WTT reserves its comments on the Draft Policy. If, however, the CA decides to adopt the Draft Policy, or a different leniency policy from that issued by the Commission, WTT submits that the CA should issue a separate industry consultation at the appropriate time.

Submitted by
Wharf T&T Limited
23 October 2015