

23 October 2015

The Competition Commission
Room 3601, 36/F, Wu Chung House
213 Queen's Road East
Wanchai
Hong Kong

By post and by email:
consultation@compcomm.hk

Dear Sirs,

Submission on Draft Leniency Policy for Undertakings Engaged in Cartel Conduct (the Draft Leniency Policy)

Link Asset Management Limited (as manager of Link REIT (a Hang Seng Index Constituent Stock SEHK stock code: 823)), in general, supports the idea of leniency. We have some observations on the Draft Leniency Policy which we hope are helpful to the Competition Commissioner (the **Commissioner**).

1. Possibility of private (follow-on) action

1.1. We note the leniency applicant will be required to submit to an order being made by the Competition Tribunal (the **Tribunal**) to the effect that it has contravened the First Conduct Rule¹. Submitting to the Tribunal Order exposes the leniency applicant to the risk of follow-on private action². This may discourage the cartel offender coming forward to provide information to assist the Commission in its effort to break cartel arrangement. The "disincentive" may be stronger if the leniency applicant is also required to give consent for the Commissioner to exchange Leniency Application Material with other/overseas anti-trust enforcement authorities³.

1.2. We agree with the suggestion of requiring a set of agreed facts from the leniency applicant but thought the further step of obtaining a Tribunal order may not be necessary.

2. Application to First Conduct Rule only

2.1. The leniency arrangement does not apply to Second Conduct Rule contravention. S.80 of the Competition Ordinance does not restrict Commissioner's power to grant leniency. Is there any specific consideration on the part of the Commissioner that leniency should not be granted to non-cartel cases?

¹ Paragraph 2.22 of the Draft Leniency Guidelines.

² See paragraph 1.6 of the Draft Leniency Guidelines and page 3 of the Commissioner's Guide to the Draft Leniency Policy of 23 September 2015.

³ See paragraph 6.2 of the Draft Leniency Policy.

2.2. In the Guide to the Draft Leniency Policy, the Commissioner indicated that it will consider favourably on a “case-by-case” basis when the contravention does not qualify for leniency treatment under the Leniency Policy of the Commission⁴. It will be more complete if the Draft Leniency Policy can set out at least the general principles upon which the Commissioner may consider favourable treatment in non-cartel/non-undertaking situations.

3. Miscellaneous

3.1. Paragraph 2.12 of the Draft Leniency policy says “Leniency will not be available under this policy if the Commission *has decided* to issue an infringement notice under section 67 of the Ordinance or to commence proceedings in the Tribunal in respect of the cartel conduct...”. For more objectivity and transparency, it helps if the Commissioner can clarify in the Leniency policy that leniency will not be available when the Commission “... *has issued* an infringement notice under section 67 of the Ordinance or *has commenced proceedings* in the Tribunal in respect of the cartel...”

We hope the above assists the Commissioner. Should the Commission require us to elaborate further, please contact me, or our Director (Legal) & Company Secretary, Mr. Ricky Chan at 21751998.

Yours faithfully,



Andy Cheung, CFO & Executive Director
Link Asset Management Limited
(as Manager of Link Real Estate Investment Trust)

⁴ Such as the applicant is not an undertaking or the contravention does not involve cartel infringement.