

立法會
Legislative Council

LC Paper No. CB(1)2220/05-06
(These minutes have been seen
by the Administration)

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Panel on Economic Services

Minutes of meeting
held on Wednesday, 19 July 2006 at 10:45 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon James TIEN Pei-chun, GBS, JP (Chairman)
Hon Jeffrey LAM Kin-fung, SBS, JP (Deputy Chairman)
Dr Hon David LI Kwok-po, GBS, JP
Hon Fred LI Wah-ming, JP
Hon SIN Chung-kai, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Chin-shek, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Vincent FANG Kang, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Albert Jinghan CHENG
Hon TAM Heung-man
- Members attending** : Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEE Wing-tat
- Members absent** : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon LUI Ming-wah, SBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Abraham SHEK Lai-him, JP
Hon KWONG Chi-kin

- Public officers attending** : Mr Stephen IP
Secretary for Economic Development and Labour
- Ms Eva CHENG
Permanent Secretary for Economic Development and Labour
(Economic Development)
- Mr Michael WONG
Deputy Secretary for Economic Development and Labour
(Economic Development)
- Mr Jonathan MCKINLEY
Principal Assistant Secretary for Economic Development and Labour (Economic Development)
- Mr Francis CHENG
Assistant Secretary for Economic Development and Labour
(Economic Development)
- Attendance by invitation** : Competition Policy Review Committee
- Mr Christopher CHENG
Chairman
- Professor CHAN Ka-keung
Member
- Clerk in attendance** : Ms Connie SZETO
Chief Council Secretary (1)6
- Staff in attendance** : Ms Debbie YAU
Senior Council Secretary (1)1
- Ms Michelle NIEN
Legislative Assistant (1)9
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I. Confirmation of minutes and matters arising
(LC Paper No. CB(1)1802/05-06 — Minutes of meeting on
22 May 2006)

The minutes of the meeting held on 22 May 2005 were confirmed.

II. Information papers issued since last meeting

2. Members noted that an information paper on “Tables and graphs showing the import and retail prices of major oil products from June 2004 to May 2006 furnished by the Census and Statistics Department” (LC Paper No. CB(1)1924/05-06(01)) had been issued since the last regular meeting held on 26 June 2006.

III. Report of the Competition Policy Review Committee
(LC Paper No. CB(1)1923/05-06(01) — Information paper provided by the
Administration)

LC Paper No. CB(1)1986/05-06(01) — Submission from the Chinese
Manufacturers’ Association of
Hong Kong)

Opening remarks by the Administration

3. At the Chairman’s invitation, the Secretary for Economic Development and Labour (SEDL) briefed members on the background of the Report on the Review of Hong Kong’s Competition Policy (the Report). He said that the Competition Policy Review Committee (the CPRC) was appointed by the Competition Policy Advisory Group (COMPAG) in June 2005 to review the existing competition policy in Hong Kong. The CPRC submitted its report to COMPAG at the end of June 2006, which had been published for public information. The Government was aware that there had been different views on the CPRC’s recommendation of setting up a competition regulatory regime. While some stakeholders had expressed support for the recommendation, others, for example in the business community, had expressed reservations about the possible effect of a cross-sector competition law on business practices in Hong Kong. The CPRC had therefore suggested, and the Government agreed that the public be engaged in a thorough process of consultation before deciding whether or not there was a need to draft a new competition law. The Government was carefully considering the recommendations of the CPRC, with a view to drawing up a public discussion document based on the Report and the Government’s initial views on a viable way forward for competition policy. To allow time for the preparation of the consultation document and organization of events, it

was envisaged that the engagement process for this issue could start in the final quarter of 2006.

Presentation on the Report

4. Upon invitation of the Chairman, Mr Christopher CHENG, Chairman of the CPRC, introduced the key findings of the Report and the major recommendations. He highlighted the following points:

- (a) The CPRC had reviewed international experience in the formulation and application of competition law, and had been briefed by experts in this area from other jurisdictions. It had also studied the local sector specific competition regulatory regimes for the telecommunications and broadcasting industries, reviewed submissions from interested parties and complaints and studies handled by COMPAG.
- (b) In considering the need for new legislation to support competition policy, the CPRC had taken the view that any new approach should serve the established policy objective of enhancing economic efficiency and the free flow of trade, thereby also benefiting consumer welfare. The aim should not be to target or to benefit specific sectors, nor to stimulate or introduce competition artificially, or to seek to change market structure, but rather to reinforce business and consumer confidence and enhance Hong Kong's pro-enterprise, pro-market environment, as well as provide a level playing field for all.
- (c) The CPRC had proposed introducing a new competition law to deter and sanction specific types of anti-competitive conduct. The law should be cross-sector in nature, rather than singling out certain sectors of the economy; and should allow for exemptions to be made where so merited on public policy or economic grounds. The law would cover specific types of anti-competitive conduct set out in the current COMPAG guidelines including price-fixing, bid-rigging, market allocation, sales and production quotas, joint boycotts, unfair or discriminatory standards, and abuse of a dominant market position (such as predatory pricing). There would be broad definitions in the law on the anti-competitive conduct and a need for detailed guidelines to explain the potential scope of the offences.
- (d) On the institutional framework, the CPRC recommended that a Competition Commission, consisting of a governing board and a full-time executive office, be established as the regulatory authority responsible for enforcing the new law. The Commission would have discretion not to act on inappropriate complaints. There should be appropriate checks and balances, including an appeals channel, to guard against abuse of regulatory power. The CPRC had considered whether

the Commission should be responsible not only for investigating cases of potential anti-competitive conduct, but also for adjudicating on and sanctioning such cases. It had discussed the option of establishing a Competition Tribunal to adjudicate on cases and to hand down sanctions, and recommended that the Government should seriously consider this option. The CPRC also recommended that, regardless of whether the sanctions were ultimately handed down by a Tribunal or by the Commission itself, these should be limited to civil penalties. There should be the issue of “cease and desist” orders to prevent suspected anti-competitive conduct from continuing and administrative settlement in lieu of formal proceedings against anti-competitive conduct.

(Post meeting note: The presentation material was tabled at the meeting and issued to members vide LC Paper No. CB(1)2036/05-06(01) on 20 July 2006.)

Discussion

5. Mr Andrew LEUNG declared interest as a member of the CPRC.

Proposed legislation to support competition policy

6. Mr Howard YOUNG said that the Liberal Party (the LP) was supportive of maintaining Hong Kong’s free and open economy and promoting fair competition in the market. Nonetheless, he was aware of the business community’s concern that introducing a cross-sector competition legislation would hinder business operations. He stressed the need for the Administration to devise appropriate measures to avoid creating difficulties to business operations when implementing the new law. The Chairman pointed out that while the LP agreed on the need to enhance competition regulation in Hong Kong, given the success of the industry specific legislation in the broadcasting and the telecommunications sectors of prohibiting anti-competitive conduct in the two sectors and problems associated with the cross-sector legislative approach in overseas regulatory regimes, the LP had questioned the appropriateness for applying a general competition legislation across all sectors in Hong Kong instead of extending the sector specific approach to sectors where competition was felt to be concern to the public. In this connection, the Chairman cautioned about problems for the new competition regime to interface with the existing regulatory framework for the broadcasting and the telecommunications sectors, including possible overlaps between the new cross-sector law and the existing sector specific laws, and the involvement of different regulators for enforcing the concerned laws.

7. Mr Andrew LEUNG expressed reservation over the recommendation of introducing a cross-sector new legislation to support competition policy in Hong Kong. He was aware that some stakeholders in the business community, in particular the small and medium-sized enterprises (SMEs) were concerned that they would be adversely affected by the new legislation and small businesses might easily fall foul

of the new legislation. The Deputy Chairman echoed the concern expressed by SMEs. He was particularly concerned that SMEs might not be aware of their obligations under the new law and their innovation and flexibility might be hindered by the new law. They asked how the Administration and the CPRC would address the above concerns.

8. SEDL took note of members' concerns and said that the Administration would take them into account in preparing the consultation document. In enhancing competition in Hong Kong, Mr Christopher CHENG said that the CPRC had considered it appropriate to adopt a legislative approach to put in place a competition regulatory regime as statutory backing would be essential to combat anti-competitive conduct. On the recommendation of introducing a cross-sector competition legislation, Mr CHENG explained that anti-competitive conduct could occur in any sectors of the economy and there were no strong grounds for targeting only certain individual sectors or industries for regulation. Moreover, it would be difficult to define precisely within the law the extent of many of the individual sectors. The CPRC considered that a sector targeted approach might run the risk of introducing a discriminatory element that was not present in the current competition policy.

9. As regards the concern about the impact of the new law on the business sector, Mr Christopher CHENG said that the proposed competition law would promote the awareness of large companies about anti-competitive conduct and help the management avoid committing such conduct. While the CPRC recognized the concerns expressed by SMEs, it was aware of their views that the lack of a competition law in Hong Kong had put them into a disadvantaged position. SMEs saw a need for Hong Kong to put in place a new regulatory regime enhancing fair competition among market players and ensuring a level playing field for all. The CPRC considered that the new legislation would have little impact on the operating costs for businesses and would not be abused by large companies to undermine SMEs by accusing them of anti-competitive conduct. The CPRC recognized the need to put in place clear guidelines to supplement statutory definitions of specified types of anti-competitive conduct to help businesses understand conduct that could be considered anti-competitive. Such administrative guidelines would clarify the principles that would govern regulatory considerations and decisions, thus providing certainty to stakeholders. Moreover, the particular anti-competitive conduct could not be an offence per se, but must be proven to have been carried out with the intent to distort the market or have the effect of distorting normal market operation. Mr CHENG further assured members that the Competition Commission would have the discretion not to pursue cases where they were considered to be inappropriate which could address the concern about small companies being subject to legal action by large corporations.

10. As to the concern about interface of the new regulatory regime with the existing regulatory framework in the broadcasting and the telecommunications sectors, Professor CHAN Ka-keung, a member of the CPRC, said that the CPRC had studied related issues and the major views were set out in paragraphs 58 and 59 of the

Report. The CPRC had noted that cross-sector and sector specific laws for regulating competition could co-exist in other jurisdictions. It considered that there would be no conflicts in implementing the existing sector specific regimes and the new competition regime concurrently. The CPRC recommended that the existing two sector specific regimes should be retained during the initial years of operation of the new cross-sector competition law as their coverage was more comprehensive than the proposed cross-sector competition law. For example, the cross-sector regime would not initially deal with mergers and acquisitions, and the sector specific regimes also dealt with other aspects of industry regulation, such as licensing. Moreover, the sector specific regimes had been operating for a number of years and the sector regulators had built up a body of guidelines, procedures and precedents which the new cross-sector authority might take some time to develop. Furthermore, there were advantages for the sector-specific regulators to continue to administer competition law in their respective sectors because of their detailed knowledge about the operation of these sectors. Nonetheless, the CPRC agreed that there should be coordination between the cross-sector competition authority and the sector regulators about the administration of competition law to ensure consistent enforcement standards.

11. Ms Miriam LAU and Mr Andrew LEUNG expressed concern that the public and SMEs might have unrealistic expectation about the competition law capable of combating all existing anti-competitive conduct in Hong Kong. In this connection, Ms LAU enquired about how the new law could address the concern about perceived anti-competitive conduct of large supermarkets involving in predatory pricing and complaints about alleged anti-competitive conduct received by COMPAG in the past. She stressed that the public and the business sector should be made aware of the possible effects and benefits of the new law, and its impacts on the community and the business sector, as well as its limitations, in considering the way forward for regulating competition in Hong Kong. The Administration should provide relevant local examples and cases in the consultation document, for instance, whether and how the new competition regime could address perceived anti-competition conduct in the auto-fuel retail sector and the logistics sector.

12. Professor CHAN Ka-keung said that the new competition regime would reinforce fair competition in the market. The new law would target at specific anti-competitive conduct which ran counter to the objectives of the competition policy rather than opening up particular sectors to greater competition. While anti-competitive practices did exist in some sectors of the economy, the circumstances and factors involved in individual cases differed. It would be imprudent at this stage to predict the resultant market situation after implementation of the new regulatory regime. Nonetheless, the CPRC had recommended vesting the Competition Commission with sufficient power to undertake full and fair investigation of possible cases of anti-competitive conduct.

13. SEDL took note of members' concerns. He re-iterated the importance of engaging the public in a thorough process of consultation before deciding whether or

not there was a need to draft a new competition law. He assured members that the consultation document would set out proposals for the new competition regime including relevant information and analysis to facilitate consideration by the public.

14. Mr Fred LI and Mr LEE Wing-tat expressed appreciation for the efforts of the CPRC and indicated the Democratic Party's full support for the recommendation of introducing a cross-sector legislation in pursuing the competition policy in Hong Kong which was in line with the approach adopted in many overseas jurisdictions.

15. Mr WONG Ting-kwong conveyed the Democratic Alliance for Betterment and Progress of Hong Kong (DAB)'s support for any measures that could enhance fair competition in the economy. In considering the way forward for the competition regulatory regime, the DAB was of the view that the Administration should adopt the recommended legislative approach only when there was community consensus on the issue, and formulate relevant proposals to seek public views in the consultation exercise.

16. Ms Emily LAU indicated support for introducing a competition law in Hong Kong and for the Administration to prepare a consultation document to seek public views on a viable way in taking forward the competition policy. Ms LAU considered that the consultation document should set out the background and key considerations of the CPRC when formulating its views and recommendations, the Administration's proposals on the proposed regulatory regime including the possible structure, powers and resources of the regulatory authority, as well as the Administration's responses to address concerns raised by the public and the business community. To provide sufficient time for the Legislative Council (LegCo) to scrutinize the relevant bill before the expiry of the current LegCo term in 2008, Ms LAU called on the Administration to introduce the relevant bill into LegCo as soon as practicable.

17. Noting that Hong Kong was ranked as the 11th largest trading entity in the world and was characterized by a high proportion of SMEs among the businesses (paragraph 9 of the Report), Ms Emily LAU sought the CPRC's view on the relevance of international experience and practices in regulating competition to Hong Kong. She further opined that information on the competition regulatory regime of the world's first ten largest trading entities should be provided for members' reference. In this connection, the Chairman enquired whether the CPRC had undertaken research on the competition laws and regulatory regimes of overseas jurisdictions, including the effectiveness and operational problems, if any, in the enforcement.

18. Mr Christopher CHENG said that the CPRC had hosted a seminar in August 2005 at which experts on competition policy and legislation in overseas jurisdictions exchanged views and shared experience with its members. Moreover, the CPRC's secretariat had conducted research on overseas competition regulatory regimes and presented the details for reference of the CPRC. The CPRC believed that a legislative approach would be effective in combating anti-competitive conduct in the market,

and would benefit consumer welfare and all sectors in the economy. Professor CHAN Ka-keung added that advanced economies in the world had put in place competition laws to regulate anti-competitive conduct. He said that in recommending a legislative approach to take forward the competition policy in Hong Kong, the CPRC had recognized the need to maintain Hong Kong's free and favourable business environment, as well as the possible impact on the business sector, particularly SMEs. He re-iterated that the CPRC had recommended that the Competition Commission would be vested with appropriate powers to investigate possible cases of anti-competitive conduct and would have the discretion not to pursue inappropriate complaints. This would address SMEs' concern about small companies to be subject to legal action by large companies.

Scope of the anti-competitive conduct

19. On the scope of the anti-competitive conduct to be covered by the proposed new law, the Deputy Chairman enquired about the rationale of excluding the conduct of "natural" monopolies. He further expressed concern about difficulties in defining clearly the types of the anti-competitive conduct to be covered and that businesses would unwittingly falling foul of the new provisions. For instance, there might be misunderstanding from SMEs as whether a dominant market position achieved by initiative to develop new products or services could be regarded as anti-competitive conduct. Ms Miriam LAU expressed concern about whether joint actions by SMEs to lower prices with a view to competing with large companies would be regarded as anti-competitive conduct. She considered that there should be clear definitions on the types of the anti-competitive conduct with reference to objective criteria to be established and called on the Administration to provide in the consultation document local examples and cases of business practices and behaviour which would be considered as anti-competitive conduct or otherwise so that the public and the business community could have a better understanding on the scope of the new law.

20. In reply, Professor CHAN Ka-keung explained that "natural" monopolies usually exist in sectors involving large fixed asset investment with long paid back periods such as the energy industry. The domination of these sectors by a small number of large companies, which was attributed to the special market structure of the sectors, was inevitable and would not be anti-competitive per se. As to the concern expressed by SMEs, Professor CHAN said that given the nature of SMEs and scale of operation, there should not be concern about the abuse of their dominant market position to manipulate the market.

21. In reply to Mr Howard YOUNG's enquiry about the practices that would be regarded as market allocation and whether the market share of particular companies would be taken into account in determining whether or not anti-competitive conduct had taken place, Professor CHAN Ka-keung said that investigation on the concerned conduct should focus on whether companies had engaged in collusion to achieve dominant market position with a view to controlling market operation and fixing unfair prices.

22. Ms Miriam LAU and Ms Emily LAU noted that there was serious concern about bundling of services across sectors by large companies, for example, the inclusion of telecommunications service charges in estate management fees. They enquired why such anti-competitive conduct was not covered in the proposed competition law.

23. Professor CHAN Ka-keung said that the CPRC was aware of concerns about the problem of bundling of services across sectors. He remarked that while bundling of services might not necessarily be anti-competitive per se, the practice by companies to bundle services in order to restrict competitors from entering the market would be considered anti-competitive. Such conduct would be covered under the category of “abuse of a dominant market position” and be combated under the new law.

24. While expressing support for the CPRC’s recommendation of adopting a legislative approach in regulating competition in Hong Kong, Mr Ronny TONG was concerned that the seven types of anti-competitive conduct recommended to be regulated under the cross-sector law might not cover some perceived anti-competitive behaviour existed in the market. For instance, a property developer which also operated supermarket business might refuse to rent premises in its shopping centres to supermarket operators which were not its subsidiary or associated companies. While such conduct was aimed at driving competitors out of the market, it might not fit in any category of the seven types of anti-competitive conduct.

25. While recognizing the concern about the difficulties in specifying the details of each type of anti-competitive conduct to be subject under the new law, Professor CHAN Ka-keung stressed that the enforcement authority needed to conduct thorough investigation into each case taking into account relevant factors, such as size of the market, number of competitors and their relationship and respective market share etc., in determining whether anti-competitive conduct had taken place. He agreed that the public should give views on the possible scope of the new competition law.

26. In this connection, Mr Ronny TONG referred to his submission forwarded to the CPRC in which he had suggested other types of possible anti-competitive conduct to be covered in the new competition law. He urged the Administration to consider his submission and extend the scope of the new law. SEDL took note of the view and assured members that the Administration would take into consideration related suggestions when preparing the consultation document.

27. As regards the recommendation of providing exemptions from the competition law, Mr WONG Ting-kwong enquired about the criteria to be considered in granting exemptions to certain anti-competitive conduct. He stressed the importance for the Administration to consider the matter carefully so as to ensure the integrity and effectiveness of the new law. The Chairman said that the LP shared the

view that the scope of exemption to be provided under the competition legislation should be restricted.

28. SEDL agreed that the recommendation merited careful consideration and shared members' view that the scope of the exemptions should not be too wide so as to avoid undermining the effectiveness of the new legislation. He said that the Administration would work out the details, including possible types of conduct to be exempted and criteria to be considered, in the consultation document.

29. Mr Christopher CHENG supplemented that all of the overseas competition regulatory regimes studied by the CPRC had included exemption provisions which allowed exemptions on economic or public policy grounds. He considered that the exemptions to be provided should be fully justified and agreed that the details of the exemption provisions should be worked out taking into account views expressed in the public consultation and be reviewed by the future regulatory authority to be established when enforcing the new competition legislation.

30. Ms Audrey EU said that the Civic Party welcomed the Report and supported adopting a legislative approach in taking forward the recommendations. She noted that although the business community had different views on whether competition regulation in Hong Kong should be introduced on a cross-sector basis due to concern about possible adverse effect on the business sector, in particular SMEs, it was supportive of a regulatory regime ensuring fair market competition. In this connection, Ms EU expressed concern that the proposal of granting exemptions from the regulatory regime was to cater for the interest of large companies and asked how SMEs' concern about the new legislation targeting at them could be addressed.

31. Professor CHAN Ka-keung re-iterated that the purpose of the new law was to prevent and deter anti-competitive conduct which had been carried out with the intent to distort the market and lessen competition regardless whether the conduct was engaged by large or small companies. The new law did not seek to change the market structure in certain sectors where large companies, due to operation of economy of scale, might have a dominant position in the market. While such market structure might be conducive to occurrence of anti-competitive conduct, it did not necessarily follow that such conduct had taken place nor the companies had the intent to distort the market.

Sanctions against anti-competitive conduct

32. Mr Fred LI noted that for the six overseas regulatory regimes reviewed by the CPRC, except the European Union, all had included both civil and criminal sanctions against anti-competitive conduct. However, Mr LI noted that the CPRC had only recommended imposing civil sanctions on proven anti-competitive conduct and queried whether the recommendation was a compromise with a view to gaining the business community's support for the proposed competition regulatory regime. Mr Howard YOUNG remarked that the recommendation of civil sanctions might

give rise to concern about the effectiveness of the regime in preventing anti-competitive conduct.

33. Mr Christopher CHENG and Professor CHAN Ka-keung, said that the CPRC had considered thoroughly whether civil or criminal sanctions should be applied to proven cases of anti-competitive conduct. Having considered the circumstances of Hong Kong and the fact that civil sanctions, which might include heavy fines and disqualification from being a company director, should have a sufficiently powerful deterrent effect; the CPRC was of the view that it was a prudent approach to include only civil sanctions in the regulatory regime as Hong Kong's first step in putting in place a competition law. In this connection, Mr Jeffery LAM considered that it was appropriate to apply civil sanctions in the initial implementation of the competition regime.

34. On the civil sanctions for breaches of the competition legislation, Miss TAM Heung-man enquired about the level of fines to be imposed and whether consideration would be given to include provisions in the competition laws in Singapore and the United Kingdom which linked the level of fines to the annual business turnover of the companies, in order to enhance the deterrent effect of the new legislation.

35. In response, SEDL said that the Administration would formulate proposals on the civil sanctions including the levels of and mechanism for determining the fines with reference to overseas regulatory regimes and in the light of circumstances in Hong Kong.

The proposed regulatory framework and procedure

36. On the enforcement of the proposed new competition legislation, Mr Fred LI enquired about the role of the Competition Commission. In this connection, he noted that there was concern from the business community that implementation of the new law would require the parties alleged of engaging in anti-competitive conduct to prove their innocence, while the onus of proof should rest with the prosecution, i.e. the Competition Commission, in accordance with the common law principle. Mr LI considered that the Administration should clarify the issue to allay the concern.

37. As regards enforcement of the new competition legislation, Mr Christopher CHENG advised that the Competition Commission would be established as the regulatory authority. It would consist of a governing board and underpinned by an executive arm that would function both as a secretariat and an investigating office to conduct investigation on complaints about suspected anti-competitive behaviour. SEDL added that the new competition law should include aspects, such as the regulatory procedures including the appropriate powers of the Competition Commission for undertaking thorough investigation on suspected cases of anti-competitive conduct and safeguards for protection of rights of the parties subject to investigation.

38. Mr Fred LI noted that the CPRC had considered whether the Competition Commission should be established as the single regulator to enforce all aspects of the new law including deciding cases and imposing penalties, or whether a Competition Tribunal should be established as a judicial body for adjudicating cases following the investigation by the Competition Commission. With the CPRC's recommendation of imposing only civil sanctions on breaches of the new law, Mr LI questioned the need for establishing the Competition Tribunal on concerns about possible overlap in the regulatory structure and increase in resources.

39. Mr Chirstopher CHENG said that the CPRC kept an open mind as whether a single regulator approach should be adopted in the future competition regime. While the CPRC noted that a single regulatory body would have the benefits of providing a simple and streamlined institutional structure, and enhancing efficiency in handling cases, it recognized the setting up of a separate judicial body would strengthen the checks and balances of the regulatory procedures, and better reassure the public and the business community of the credibility on the regime. The CPRC recommended that the Government should seriously consider the issue of whether to establish a Competition Tribunal, and if so, its possible role, which could include adjudicating on cases brought by the Competition Commission and hand down sanctions, or to act as a review body for hearing appeals against decisions by the Competition Commission (should the latter had sanctioning powers). SEDL supplemented that there were different regulatory models for setting up the competition regimes in other jurisdictions, and each model had its pros and cons. He noted the need for the Administration to set out more details on the issue in the consultation document for consideration of the community.

40. Mr LEE Wing-tat pointed out that the complaints received by COMPAG referred to in Attachment C to the Report had not reflected the actual situation of the community's concern about the competition issue in Hong Kong. Moreover, due to the limited jurisdiction, Mr LEE opined that COMPAG had not played an effective role in enhancing competition in Hong Kong. Pointing out that establishment and implementation of the recommended competition regulatory regime would involve substantial resources, Mr LEE further stressed the need for providing sufficient resources to ensure its effective and efficient operation. He sought the views of the Administration and the CPRC on the proposed structure and powers of the Competition Commission.

41. On the concern about resources for the new competition regime, Mr Christopher CHENG said that the CPRC had considered related issues but had not formulated detailed recommendation. It was believed that if the public supported the establishment of the relevant regime, the Administration should plan the necessary administrative and resources requirements for the establishment and implementation of the regime. As to the role of COMPAG, Mr CHENG said that it was the CPRC's view that if new legislation were enacted to regulate anti-competitive conduct, the relevant regulatory authority would effectively take

over the work currently done by COMPAG. Regarding the role of the Competition Commission, Professor CHAN Ka-keung said that while CPRC recognized the importance for the Commission to have sufficient investigative power, there had not been in-depth discussion on the details of the power and the resources involved. In this connection, SEDL said that the Administration would work out relevant proposals taking into account the Report, the experience and resource requirements of COMPAG, and comparable overseas regulatory regimes; and set out the details in the consultation document.

42. Mr LEE Wing-tat suggested that the new competition law should include provisions to protect the identity of complainants and parties involved in the investigation process so as to encourage them to come forward in reporting suspected anti-competitive conduct. Sharing the view, Ms Emily LAU urged the Administration to make reference to relevant provisions in the Financial Reporting Council Bill passed by the LegCo in July 2006 in formulating the regulatory regime. Mr Christopher CHENG agreed that the Administration should examine the relevant details further and consult the public in the consultation document.

43. Noting that the Competition Commission would have discretion not to pursue complaints about anti-competitive conduct, Miss TAM Heung-man was concerned whether a mechanism would be in place to ensure the Commission would exercise the discretionary power in a reasonable and proper manner.

44. Mr Christopher CHENG said that under the CPRC's recommendation, the Competition Commission would have two tiers. The governing board would comprise members representing various interests including business, professional, consumer and government, while the executive arm would include expertise in various disciplines. It was essential that the Commission would include suitable and competent members and staff so as to ensure its public credibility and it would discharge its duties in a fair and just manner.

45. Referring to cases where companies had not been found breaching statutory requirements under lawsuits initiated by the Equal Opportunities Commission were demanded to pay the court charges, Mr Andrew LEUNG highlighted the concern about legal costs to be faced by SMEs in fighting legal actions under the new competition law. He opined that there should be measures to reduce the possible burden of legal costs to SMEs.

46. Mr Christopher CHENG said that it was essential to ensure the Competition Commission would be provided with sufficient and appropriate power to undertake full and fair investigation on cases of suspected anti-competition conduct. If the Competition Tribunal were to be established, it would adjudicate on cases brought by the Competition Commission and hand down sanctions, or act as a review body to hear appeals against decisions by the Commission in the event that the latter had sanctioning powers. In this connection, SEDL said that there would be two options in enforcing the new competition law. Firstly, the Competition Commission would be

responsible for enforcing all aspects of the new law, while the Competition Tribunal would act as the review body. Secondly, the Competition Commission would only act as the investigator, and the Competition Tribunal would be responsible for adjudicating cases and hand down penalties. The public would be consulted on the two options in the consultation document.

Conclusion

47. Mr Christopher CHENG thanked members for providing an opportunity for him and Professor CHAN Ka-keung to give a briefing on the findings and recommendations of the CPRC, and to exchange views on issues relating to competition regulation in Hong Kong. The Chairman thanked Mr CHENG and Professor CHAN for attending the meeting. In concluding the discussion, the Chairman said that while members had not raised objection to adopting a legislative approach in regulating competition, some members had expressed reservations and raised various concerns. He called upon the Administration to consider members' views and address their concerns in the context of the public consultation exercise.

IV. Any other business

48. The Chairman reminded members that a special meeting had been scheduled for Monday, 25 September 2006, at 10:45 am to meet with deputations on the subject of environmental regulation in the future electricity market in Hong Kong.

49. As this was the last regular meeting of the Panel in the 2005-06 legislative session, on behalf of the Panel, the Chairman thanked the Administration for its co-operation during the past year, and looked forward to closer communication with it to better serve the public in future.

50. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
18 September 2006