

立法會
Legislative Council

LC Paper No. CB(1)1678/06-07
(These minutes have been seen
by the Administration)

Ref : CB1/PL/ES/1

Panel on Economic Services

Minutes of meeting
held on Monday, 26 March 2007, at 10:45 am
in the Chamber of the Legislative Council Building

- Members present** : Hon Jeffrey LAM Kin-fung, SBS, JP (Chairman)
Hon Abraham SHEK Lai-him, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon SIN Chung-kai, JP
Hon Howard YOUNG, SBS, 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 KWONG Chi-kin
Hon TAM Heung-man
- Member attending** : Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
- Members absent** : Dr Hon David LI Kwok-po, GBS, JP
Hon LAU Chin-shek, JP

Public officers attending : Agenda Item IV

Ms Eva CHENG
Permanent Secretary for Economic Development and Labour (Economic Development)

Mr Michael WONG
Deputy Secretary for Economic Development and Labour (Economic Development) 1

Mr Howard LEE
Deputy Secretary for Economic Development and Labour (Economic Development) 2

Mr Francis CHENG
Principal Assistant Secretary for Economic Development and Labour (Economic Development) A2

Ms Brenda CHENG
Principal Assistant Secretary for Economic Development and Labour (Economic Development) FM

Mr Stephen KWOK
Assistant Director-General of Civil Aviation (Air Services)

Agenda Item V

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)

Attendance by invitation : Agenda Item IV

China Resources Petrochems (Group) Co. Ltd.

Mr BAO Yan-fei
Director, Vice President
China Resources Petrochems (Group) Co. Ltd

Mr LIU Ren-jie
Vice Director Manager – CRC Petro Filling Station Co.
Ltd

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

Action

I Confirmation of minutes and matters arising
(LC Paper No. CB(1)1157/06-07 - Minutes of meeting held on
22 January 2007)

The minutes of the meeting held on 22 January 2007 were confirmed.

II Information papers issued since last meeting
(LC Paper No. CB(1)1054/06-07(01) - Tables and graphs showing the
issued via e-mail on 2 March 2007 import and retail prices of major
oil products from February 2005
to January 2007 furnished by the
Census and Statistics
Department)

2. Members noted the above paper issued since last meeting.

III Items for discussion at the next meeting

(LC Paper No. CB(1)1193/06-07(01) - List of outstanding items for discussion

LC Paper No. CB(1)1193/06-07(02) - List of follow-up actions)

3. Members agreed to discuss the following items proposed by the Administration at the next meeting to be held on Monday, 23 April 2007, at 10:45 am:

- (a) Manpower training in the maritime industry; and
- (b) Development of airport infrastructure

IV Auto-fuel prices and fuel surcharges on air passengers

(LC Paper No. CB(1)1193/06-07(03) -- Submission from Chevron Hong Kong Limited

LC Paper No. CB(1)1193/06-07(04) -- Submission from ExxonMobil HK Limited

LC Paper No. CB(1)1188/06-07(01) -- Submission from Shell Hong Kong Limited

LC Paper No. CB(1)1193/06-07(05) -- Submission from Board of Airline Representatives Hong Kong)

Opening remarks by the Chairman

4. The Chairman informed members that the Panel had invited six major oil companies in Hong Kong and the Board of Airline Representatives Hong Kong (BARHK) to attend the meeting. One oil company - China Resources Petrochems (Group) Co. Ltd. had sent representatives to the meeting while the other six parties had declined invitation. Written submissions from three oil companies and the reply from BARHK had been circulated to members before the meeting. He then welcomed representatives of China Resources Petrochems (Group) Co. Ltd. to the meeting.

Introduction by the Administration

(LC Paper No. CB(1)1183/06-07(01) -- Information paper provided by the Administration

LC Paper No. CB(1)1193/06-07(06) -- Background brief on auto-fuel prices and fuel surcharges on air passengers prepared by the Secretariat)

5. At the invitation of the Chairman, the Deputy Secretary for Economic Development and Labour (Economic Development) 2 (DS/ED2) briefed members on the Administration's work in monitoring the auto-fuel retail prices. He said that the retail auto-fuel prices had been a matter of public concern, in particular when the international oil price was persistently high in recent years. There was also concern that oil companies were prompt in increasing their pump prices when international oil price was rising, but slow in responding when international oil price was falling. Recognizing the impact of the auto-fuel prices on the local economy, the Administration had been monitoring the situation closely. The Administration had observed that changes in local pump prices had been broadly in line with the trend movements of international oil prices as reflected by prices for Brent Crude oil and Singapore free-on-board (FOB) prices for unleaded petrol and diesel. In accounting for the generally higher retail prices of auto-fuel in Hong Kong than in other places, the oil companies had advised that this was due to, inter alia, the higher operating costs, significant increase in discount levels with increased competition in a shrinking market and eroded economies of scale with the decline in sales volume.

6. DS/ED2 further advised that in a free market economy, the Government did not have the power to dictate the retail prices of auto-fuel. The Government's objectives were to maintain a stable fuel supply, encourage transparency and enhance competition. To enhance transparency in price determination, the Census and Statistics Department published the monthly average import prices of major oil products which, despite their limitations, provided some indications of the trend movements of import prices of oil products. Such information was provided to the Panel on a regular basis. The oil companies had now, at the Administration's request, included in their announcement of each intended price adjustment of auto-fuel the rationale for adjustment. In addition, for all new petrol filling station (PFS) sites tendered out, there was a new lease condition requiring PFS to display price information boards. On enhancing competition, the Government had taken measures in the past few years to encourage new operators to tender for PFS sites. So far, two new players, Sinopec and Chinaoil had won tenders and entered the market. Separately, the Government was in the process of preparing a cross-sector competition law. Any future measures against anti-competition behavior should also apply to the auto-fuel retail market.

7. The Assistant Director-General of Civil Aviation (Air Services) (ADGCA(AS)) briefed members on the mechanism for approving fuel surcharges on air passengers. He said that fuel surcharge allowed airline operators to partially recover the increase in operating cost due to fluctuations in aviation fuel prices. Under bilateral air services agreements (ASAs), passenger fuel surcharges charged by airline operators was a type of tariffs which required the approval of the relevant aeronautical authorities, and in the case of Hong Kong, the relevant authority was the Civil Aviation Department (CAD). In accordance with the existing ASAs, airline operators should consider all relevant factors including their operating costs, the passenger interests and the tariffs charged by other operators on the same routes in determining their tariffs. When approving passenger fuel surcharge applications, CAD would take into account changes in the prices of

aviation fuel, the justifications provided by the airline operators and other relevant factors. It would also ensure that the revenue so generated would not exceed the additional costs borne by the airline operators due to increased aviation fuel prices during the corresponding period. ADGCA(AS) further advised that when compared with the average fuel surcharges levied in other places, the fuel surcharges levied in Hong Kong on major routes were at a reasonable level.

Discussion

Monitoring of auto-fuel prices

8. Miss TAM Heung-man expressed concern that despite the substantial decrease in international oil prices in recent months, the local auto-fuel prices had only fallen slightly. Moreover, there was public concern that oil companies were still prompt in increasing their pump prices but slow in reducing them in response to the corresponding changes in international oil prices. She asked about the measures the Administration had taken to rectify the situation.

9. DS/ED2 advised that international oil prices had been very volatile in recent years. The Administration had all along kept in contact with the oil companies and urged them to reduce their prices once there was room for downward adjustment. As shown in Annex III of the Administration's paper (LC Paper No. CB(1)1183/06-07(01)), the movements of pump prices of ultra-low sulphur diesel (ULSD) had been broadly in line with the changes in Singapore FOB diesel prices. DS/ED2 assured members that the Administration would continue to monitor the auto-fuel retail prices closely.

10. The Chairman noted from Annex II of the Administration's paper (LC paper No. CB(1)1183/06-07(01)) that while the Singapore FOB unleaded petrol price recorded an accumulated drop of \$1.14 from August to October 2006, the corresponding decrease in local pump price for the next three months from September to November 2006 was only \$0.55, and asked whether the Administration had analyzed the reasons. In his view, large multi-national oil companies should have imported their auto-fuels at a much lower price and could therefore be able to lower its pump prices more readily.

11. DS/ED2 explained that due to the time lag in importing the fuels, changes in pump prices might not be made timely in response to changes in international oil prices. It might not be appropriate to compare prices of imported fuels and local pump prices at two particular points of time. In general, the Administration would monitor the local pump prices with the trend movements of international oil prices over a period of time to see if they were broadly in line. Moreover, it was also necessary to take into account the level of discounts offered by the oil companies to customers for the period as this factor was not reflected in the pump prices.

12. Mr Andrew LEUNG noted from Chart 2 of the submission (LC Paper No. CB(1)1193/06-07(04)) provided by ExxonMobil Hong Kong Limited (EMHK) that the company was slow in reducing its pump prices in lower half of 2006 when international oil price was falling and expressed concern about effectiveness of the Administration's work in monitoring the company's pump prices.

13. DS/ED2 pointed out that as shown in Chart 2, although EMHK's pump prices for the said period had not dropped in tandem with the international oil prices, the company had offered various discounts to its customers. With these discounts factored in, the effective prices paid by customers were actually much lower.

Competition in the auto-fuel market

14. While appreciating that two new players had entered the auto-fuel market to join the other six existing oil suppliers, Ms Miriam LAU was concerned whether the new players had imported auto-fuels directly from overseas or sourced the supply from local major oil companies. She considered that if it was the latter case, there could hardly be any genuine competition in the auto-fuel retail market.

15. In response, DS/ED2 understood that the two new players, Sinopec and Chinaoil, were purchasing oil from existing oil importers. He highlighted that the import cost of oil products was just a part of the operating costs of the oil companies. Oil companies, though importing auto-fuels at similar cost and selling them at the same pump prices, were competing vigorously in the market by offering various discounts to customers.

16. Noting that oil companies had been consistently setting their pump prices at the same levels, Miss TAM Heung-man was concerned how the new cross-sector competition law could address the issue of parallel pump pricing.

17. DS/ED2 re-iterated that although the pump prices of different oil companies were set at the same level, individual oil companies were offering various discounts at high levels to consumers who were paying considerably less than the pump prices. As such, there was no clear evidence of collusion by oil companies in setting prices in the auto-fuel retail market. DS/ED2 added that the new competition law could have provisions to prevent anti-competitive conduct.

18. The Permanent Secretary for Economic Development and Labour (Economic Development) (PS/ED) added that according to the findings of the consultancy study on the local auto-fuel retail market (the Study) conducted in 2005, a competition law could empower a regulator to require the oil companies to produce relevant information when conducting investigation into suspected anti-competitive conduct, thus providing direct evidence of any collusive behaviour.

19. Mr Andrew LEUNG considered that given a shrinking auto-fuel market as claimed by many oil companies, there should be keen competition which should help bring down the pump prices. However, in reality, pump prices stood at persistently high levels. Moreover, the various discounts offered by oil companies had disadvantaged the low users who had to pay about \$0.8 more per litre of fuel purchased. In this connection, Mr LEUNG asked whether the Administration would consider regulating the situation where the discounted prices were much lower than the pump prices.

20. DS/ED2 highlighted that the overall sales volume of auto-fuels in Hong Kong was dropping, in particular for diesel where the sales volume had been falling since 2000 mainly as a result of the replacement of diesel by Liquefied Petroleum Gas (LPG) as fuels for taxis and minibuses. Furthermore, findings of the Study also showed that the gross margins of local oil companies had fallen in the past few years due to more widely available discounts, which demonstrated the increased competition in a shrinking market.

Measures taken by the Government to enhance competition in the auto-fuel market

21. Mr Fred LI expressed concern about possibility that the three major oil companies, viz Chevron Hong Kong Limited, EMHK and Shell Hong Kong Limited could adopt competition practices setting auto-fuel retail prices at high levels on one hand while offering great discounts to customers on the other. He asked whether CRC Petrol Filling Station Co. Ltd (CRC) had been led by the major oil companies in making its pricing decisions.

22. Mr BAO Yan-fei, Director, Vice President of China Resources Petrochemicals (Group) Co Ltd said that CRC had joined the local auto-fuel retail market in 1988 and currently held a relatively small market share. In line with Hong Kong's market economy, CRC had taken into consideration factors such as the import costs, operating costs, projected sales volume as well as the market retail prices in setting its pump prices which were competitive. Mr BAO considered that the various discounts offered by different oil companies had helped show that the auto-fuel retail market was a competitive market. In reply to Mr Fred LI's urge for CRC to lower its pump prices instead of offering discounts in order to compete in the market, Mr BAO advised that CRC had been operating in line with the principles of market economy and maintaining its competitiveness by offering further price concessions to some regular customers in addition to discounts.

23. Mr Ronny TONG highlighted the role of the Administration to promote fair competition in Hong Kong. He sought the view of CRC on the effectiveness of the Government's existing measures in enhancing competition in the auto-fuel market, and possible new measures, such as offering better financial terms in land grant for PFS sites to facilitate potential new entrants.

24. Mr LIU Ren-jie, Vice Director Manager of CRC remarked that the high land premium paid by Sinopec and Chinaoil for PFS sites had drastically pushed up land premium for other PFS sites. For instance, the land premium of one of CRC's PFS sites had risen from about \$48,000 to \$200,000 a month and land cost had made up roughly \$1 of the pump prices. The Government's land policy for PFS sites was exerting great pressure on the operation of oil companies. Moreover, the Government's promotion of auto-LPG had caused a gradual drop in CRC's sales of auto-fuels to less than 300 000 litres a month. High land premium coupled with decrease in sales volume had led to a dwindling of CRC's gross profits, which was a situation precisely depicted in the findings of the Study.

25. On measures to encourage new operators to tender for PFS sites, DS/ED2 said that the Government had since June 2003 tendered PFS sites in batches to facilitate potential new entrants in acquiring a critical mass of PFS sites to achieve economy of scale. He stressed that providing financial support to new market entrants by offering better terms in land grant was not consistent with the Government's policy in maintaining a level-playing field in various sectors.

26. Mr Ronny TONG was unconvinced. He pointed out that the present high land premium had created an exceptionally difficult market entry threshold while the high Government duties for auto-fuels had hindered the healthy development of new market players. As such, he called on the Administration to set the bidding price for PFS sites at a much lower level.

27. DS/ED2 re-iterated that the Administration had taken measures in the past few years to encourage new operators to tender for PFS sites. The Administration would seek to improve its measures further as and when appropriate. In enhancing competition, PS/ED highlighted that the Administration had to maintain a level-playing field while at the same time addressing the problem of market concentration. She remarked that both Sinopec and Chinaoil had successfully entered the auto-fuel market as a result of the effective measures taken by the Government.

28. Mr CHAN Kam-lam expressed similar concerns about the high land premium for PFS sites and high Government duties imposed on auto-fuels. As provision of PFS sites formed part of the overall transportation services for the community, he considered it justifiable for the Government to provide financial support to oil companies in the tendering for PFS sites. The public at large would eventually benefit from the land grant concessions in the form of lower pump prices. He pointed out that the current pump price of unleaded petrol per litre was \$12.99 in Hong Kong vis-à-vis \$5.1 in Shenzhen. The land cost (which was \$1 per litre as illustrated by CRC) and Government duty (which was currently around \$6.06 per litre for unleaded petrol) together had made up more than half of the pump price. As prices for imported oil remained volatile and the oil companies had limited room in reducing their operating costs further, Mr CHAN urged that the Government should consider lowering the land premium for PFS sites and the duties on auto-fuels.

29. DS/ED2 explained that in line with the usual practice, the Government had put up PFS sites for open tender. The land premium offered by the successful bidders was a reflection of the market situation. It was true across all sectors in Hong Kong that the operating costs in terms of land premium and salaries were high in general. It was the role of the Government to ensure a level-playing field with effective competition in place in every sector of the economy. The Government was committed to doing the same for the auto-fuel market. Indeed, the Administration had been taking various measures in recent years to enhance competition in the market and the transparency of oil companies in setting pump prices.

30. Ms Miriam LAU noted from the Study that the land cost for Hong Kong's PFS sites, on a per litre basis, had doubled that of Tokyo and was nearly six times of that in London. While only a couple of oil companies had paid an average land premium for a PFS site at about \$100 million, the pump price was set at the same level across the board. Ms LAU was concerned that oil companies which had secured PFS sites long ago at much lower premium were making huge profits. She further recalled that the Government had waived land premium for the pilot auto-LPG station in 2000 in order to encourage the use of auto-LPG by taxis and minibuses. As a result, the station was able to offer a lower retail price for customers. Due to competition, other auto-LPG stations followed suit and reduced the price for auto-LPG. Hence, Ms LAU called on the Administration to consider offering concession on the land premium for PFS sites in order to encourage competition in the market.

31. DS/ED2 advised that unlike auto-LPG which was a brand new oil product for automobiles and thus allowed the Administration greater flexibility in devising measures to promote its use at the initial stage, the auto-fuel market was a mature and competitive market and the Government would have to carefully consider the implications before modifying the existing rules in land grant for PFS sites. Nevertheless, the Administration would continue to enhance competition in the auto-fuel market and to guard against any monopoly or cartel behaviour.

32. Mr Fred LI asked whether the Administration had assessed the changes in the auto-fuel market in respect of competition and retail pump prices after the introduction of the two new players since 2003. Given that the Administration might not obtain from the oil companies commercially sensitive information, such as details of the cost items and customer-specific discount programmes, Mr LI was concerned how the Administration could monitor the auto-fuel prices and ascertain whether the oil companies had been prompt in increasing their pump prices but slow in reducing them according to the corresponding movements of international oil prices.

33. DS/ED2 advised that in monitoring auto-fuel retail prices, the Administration had been keeping track of the trend movements of international oil prices as reflected by prices for Brent Crude oil and Singapore FOB prices for unleaded petrol and diesel. While commercial information such as sales volumes, salary expenditure etc. were not available, the Administration had observed that

changes in local pump prices of auto-fuel had been broadly in line with the trend movements of international oil prices. PS/ED supplemented that according to the findings of the Study, there was no clear evidence of collusion by oil companies in the Hong Kong auto-fuel retail market.

34. Mr Andrew LEUNG remarked that apart from PFS sites, new oil companies also required land for fuel storage facilities. Due to the shortage of sites for such facilities, he asked whether the Administration would consider providing more land for oil storage purpose. Moreover, to assess the competitiveness of the auto-fuel market in Hong Kong, Mr LEUNG enquired whether the Administration had made comparisons on the operating costs of the auto-fuel industry in terms of land premium and environmental requirements for auto-fuels in Hong Kong with those of neighboring places such as Singapore and Japan.

35. DS/ED2 said that having regard to the current sales level of auto-fuels in Hong Kong, the provision of fuel storage facilities was considered adequate. He highlighted the difficulty in identifying suitable sites for fuel storage purpose due to public concern about safety. Nevertheless, the Administration would keep the matter in view and if necessary, explore feasibility of adding more storage facilities.

36. Noting that Hong Kong was currently using regular and super RON 98 unleaded petrol the quality of which was extremely high, Ms Miriam LAU considered that the less expensive RON 95 unleaded petrol should also be imported to provide consumers with choices.

37. DS/ED2 remarked that Hong Kong was among the first places in Asia to introduce ULSD for environmental considerations. However, RON 95 petrol could also meet our environmental standards. The oil companies had cited a number of operational difficulties in introducing RON 95 petrol, but the Administration had all along encouraged the oil companies to make available petrol of different quality and prices to increase the choices for customers.

Air Passenger fuel surcharges

38. Ms Miriam LAU considered that the current level of passenger fuel surcharges were exceedingly high and sought further information on the factors considered by CAD when approving relevant applications. Pointing out that the land transport operators had to absorb the cost of rising auto-fuel prices, Ms LAU said that the public was concerned about the rationale for airline operators to collect such surcharges from passengers. Miss TAM Heung-man expressed similar concern about the factors taken into consideration by CAD when approving passenger fuel surcharge applications.

39. ADGCA(AS) explained that tariff charged by an airline operator for a particular route was subject to the approval of the relevant aeronautical authorities of the two ends of the route. In approving the current passenger fuel surcharges, CAD had considered the applications in accordance with the existing bilateral

ASAs which had been published in the Government Gazette and the details were available on Government's website. CAD had also published the passenger fuel surcharges levied by some 58 airlines operating services to and from Hong Kong. Information on the prices of aviation fuels and passenger fuel surcharges levied by major airline operators in other places was also accessible on the Internet.

40. As regards the concern about approval of passenger fuel surcharges, ADGCA(AS) re-iterated that when approving the surcharges, CAD would take into account factors, including increase in the airline operators' operating cost due to fluctuations in aviation fuel prices, the justifications provided by the operators, the tariffs charged by other operators on the same routes, and the level of passenger fuel surcharges levied in other places. He assured members that in determining the levels, CAD would strike a balance between the interests of passengers and those of airline operators.

41. Pointing out that only a few press releases relating to the approval of passenger fuel surcharges were available on CAD's website, Mr SIN Chung-kai expressed concern about the lack of information and low transparency in respect of adjustments in fuel surcharges. He opined that relevant information such as the justifications provided by airline operators supporting the applications, factors considered by CAD when approving the applications, and the level of surcharges levied in other places would enable the public to better understand the rationale behind the levies. However, such information was not provided on CAD's website.

42. DS/ED1 referred members to the Administration's paper (LC Paper No. CB(1)1183/06-07(01)) which had provided the key information. He stressed that when compared with the fuel surcharges for major routes levied in other places, the level for Hong Kong was considered reasonable. Nevertheless, he agreed to look into the matter to see whether more information could be made available on CAD's website to enhance transparency, and advise the Panel of the outcomes in due course.

(Post-meeting note: The information provided by the Administration was circulated to members vide LC Paper No. CB(1)1353/06-07(01) on 13 April 2007.)

43. Mr Fred LI queried how CAD could have a full picture of the cost and profit situation of individual airline operators as these were commercially sensitive information. CAD could only rely on other information such as fluctuations in aviation fuel prices and the average fuel surcharges levied in other places in determining the level of passenger fuel surcharges in Hong Kong. Mr LI agreed that in line with other land transport operators, airline operators should absorb the increase in aviation fuel prices in their operating costs and consider recovering the increases by raising tariffs.

44. In response, DS/ED1 remarked that the question that many passengers would ask was how much it was going to cost them to travel. The levy of passenger fuel surcharges was an established international practice widely adopted by airline operators. Airline operators in Hong Kong had to act in accordance with the ASAs and to maintain its competitiveness in tariff pricing.

45. Miss TAM Heung-man was concerned in the event of drastic decline in international oil prices after the approval of the fuel surcharges, whether CAD would make a timely response to curtail the effective period of the approval or revise the level of approved surcharges accordingly.

46. On the effective period of passenger fuel surcharges, ADGCA(AS) advised that approval for airline operators to collect passenger fuel surcharges had been reviewed regularly since June 2004. Such approval had initially been reviewed at tri-monthly intervals, but subsequently changed to bi-monthly in December 2004 in order to follow more closely changes in aviation fuel prices. He added that the bi-monthly interval was a reasonable arrangement since this would allow time for CAD to process the fuel surcharge applications from some 58 airline operators and, after approval had been granted, for the airlines concerned to give sufficient notice to the travel industry and the public about any change in the fuel surcharges. Moreover, it did not affect CAD's ability to make timely adjustment to the fuel surcharges in response to the fluctuations in aviation fuel prices. The bi-monthly arrangement was thus considered appropriate.

V Report on the public consultation exercise on the way forward for competition policy

(LC Paper No. CB(1)1178/06-07(01) - Information paper provided by the Administration

LC Paper No. CB(1)1215/06-07(01) - Submission from The Chinese General Chamber of Commerce (Chinese version only)

LC Paper No. CB(1)1215/06-07(02) - Joint submission from The Chinese Manufacturers' Association of Hong Kong and Federation of Hong Kong Industries (Chinese version only)

LC Paper No. CB(1)519/06-07(01) - Information paper provided by the Administration for the meeting on 21 December 2006

- Ref: EDB CR 2/3231/2006 - Legislative Council Brief on Public Consultation on Competition Policy with the public consultation document and the Report on the Review of Hong Kong's Competition Policy
- LC Paper No. CB(1)992/06-07 - Minutes of meeting on 21 December 2006
- LC Paper No. CB(1)530/06-07(05) - Background brief on Competition Policy in Hong Kong prepared by the Secretariat for the meeting on 21 December 2006)

Briefing by the Administration

47. At the invitation of the Chairman, the Secretary for Economic Development and Labour (SEDL) briefed members on the outcome of the public consultation on the public discussion document "Promoting Competition – Maintaining our Economic Drive" and the way forward for competition policy in Hong Kong. He said that by the end of the three-month consultation period, the Administration had received many views from the general public and various sectors of the community including academics, political parties, different organizations and private companies. He highlighted the feedback received as follows:

- (a) The majority of respondents supported the introduction of a cross-sector competition law in Hong Kong and the establishment of a Competition Commission as the regulatory authority, which should be overseen by an independent, appointed board to ensure that appropriate checks and balances were in place;
- (b) Some respondents commented that rather than targeting market structures through the regulation of monopolies and merger activities, the focus of the law should be on prohibiting conduct that was likely to lessen competition or distort the normal operation of the market. It was also generally considered that a breach of the law should attract civil rather than criminal penalties; and
- (c) Some respondents, such as those from the business sector, had expressed concerns that a competition law could lead to higher business costs and potentially costly and time-consuming litigation.

48. SEDL advised that given the significant support for the introduction of a new cross-sector competition law, the Administration would accordingly begin work on the drafting of appropriate legislation having regard to the views expressed during the consultation with a view to drawing up a regulatory framework that best suited Hong Kong.

Discussion

Concerns of small and medium-sized enterprises

49. Noting that views opposing to the introduction of a cross-sector competition law mainly came from the business sector, in particular the small and medium-sized enterprises (SMEs), Miss TAM Heung-man considered that while the Administration should take measures to allay their concerns, it should not make concessions in drafting the new law, otherwise this might adversely affect its effectiveness.

50. SEDL stressed that having regard to the significant support received during the consultation, the Government was committed to introducing a cross-sector competition law in Hong Kong. While the Administration was aware of SMEs' worries that they might become the targets of complaint under the new law, it was important to note that the new competition law could promote competition and free market discipline, as well as protect SMEs from anti-competitive conduct of large consortia and facilitate their entry to the market. Nevertheless, to address SMEs' concerns, the Administration would continue to engage SMEs during the process of drafting the new law and explain to them the proposed regulatory framework. For instance, the legislation could include provisions that the regulatory authority would invoke its investigatory power on substantiated complaints only when the parties under complaint had a combined market share meeting the prescribed threshold. He assured members that given the small scale of operation of SMEs and their lack of market power, it was unlikely that they would be targeted by the regulatory authority.

51. Mr SIN Chung-kai welcomed the Administration's decision to introduce the cross-sector competition law and establish the regulatory authority. He pointed out that while major trade associations had expressed opposition on behalf of their SME members, some other SMEs had given their support. As such, Mr SIN stressed the need for the Government to take into account views expressed by different SMEs. In this connection, Mr James TIEN said that he was aware that SME members of major trade associations had expressed concerns about the impact of the cross-sector competition law on their business operation.

52. PS/ED assured that the Administration would consider all views received in an objective manner. There were different views from SMEs. SME members from some trade associations in general agreed with the approach of introducing a cross-sector competition legislation, although some had expressed concerns about possible problems that might arise during implementation. Nevertheless, PS/ED stressed that the Administration would draw on the experience of over 80

jurisdictions which had enacted competition laws in drafting and implementing the new law.

53. Expressing support for fair market competition, Mr CHAN Kam-lam however was aware of concerns expressed by some sectors of the community about the need of introducing a cross-sector competition law in Hong Kong. He urged that the Administration should take prudence in addressing the concerns expressed by major trade associations, and ensuring the new law would balance the interests of relevant stakeholders and would not hinder the operation of the business sector nor impede Hong Kong's status as a free market. Pointing out that there had been rising number of lawsuits relating to the implementation of competition laws in overseas jurisdictions in recent years, Mr CHAN enquired whether the Administration had considered adopting a sector-specific approach in implementing the competition regulatory regime in Hong Kong in a gradual manner.

54. In response, SEDL pointed out that the feedback from the public consultation exercise had shown concern about the inadequacy of the current competition regulatory regime in curbing possible anti-competitive practices in sectors not covered by existing competition legislation. He re-iterated that the Government was committed to drawing up a regulatory framework that best suited Hong Kong and providing a market environment in which companies, big or small, could compete fairly. As to concerns about enforcement and regulatory issues related to the implementation of the new law, SEDL assured members that the Administration would continue to engage the public, particularly SMEs, to address their concerns raised during the consultation period.

55. Noting that the Competition Policy Review Committee (CPRC) had recommended regulating only those anti-competitive practices that involved substantive benefits and substantial market forces, Mr Andrew LEUNG observed that the Administration had not spelt this out clearly to SMEs in the current discussion.

56. PS/ED re-iterated that in the coming months, the Administration would liaise with SMEs and continue to assure them that they would not become the target of investigation if they did not possess a significant share of the relevant market.

57. Noting that three of the four major trade associations in Hong Kong were opposed to the introduction of the cross-sector competition law, Dr LUI Ming-wah was concerned that the Administration's proposed way forward would not gain the support of the business sector. In this connection, he requested the Administration to provide information on the number of complaints received against anti-competitive acts/behaviour in respect of individual sectors in the past years, and to account how such acts/behaviour had affected the operation of the sectors. Dr LUI considered that unless evidence showed that complaints were made against many sectors, it would be more prudent to extend the current sector-specific legislative approach to cover those sectors which were subject to frequent complaint and hence competition was an issue of concern. In this connection, Mr Fred LI opined that competition law affected every consumer and not just the

trade associations.

(Post-meeting note: The information provided by the Administration was circulated to all Members vide LC Paper No. CB(1)1353/06-07(02) on 13 April 2007.)

58. In response, PS/ED confirmed that the profile of complaints to the Competition Policy Advisory Group (COMPAG) in recent years had indicated that anti-competitive conduct existed in a large number of sectors. DS/ED1 supplemented that in the absence of supporting legislation, COMPAG could not obtain relevant information enabling it to establish the veracity of allegations on anti-competitive conduct and thus was unable to determine the extent to which complaints of anti-competitive conduct might be justified. As regards the impact of anti-competitive acts on the operation of various business sectors, DS/ED1 said that anti-competitive conduct, such as the bundling of products and services across different sectors, might reduce business opportunities of SMEs and lower the quality of services provided for consumers. PS/ED added that bundling of products and services across sectors had also aroused considerable public concern in recent years. The majority of respondents to the public consultation commented that a new competition law should apply to all sectors of the economy because boundaries among business sectors were blurred and hence, sector specific law could not deal with cross-sector anti-competitive conduct. Moreover, it was difficult to identify which sectors should be subject to regulation from the outset. On the suggestion of adopting a staged approach in regulating anti-competitive conduct, PS/ED advised that at the initial stage, the new legislation would focus on prohibiting conduct that was likely to lessen competition or distort normal operation of the market, and most likely would not target market structures through regulation of merger and acquisition activities. The intention was to take an incremental approach in implementing the new competition regime.

59. Mr Ronny TONG expressed the support of the Civic Party for the proposed legislation which was a breakthrough in implementing the competition regulatory regime in Hong Kong. To gain support from various sectors of the community and allay SMEs' concerns in particular, Mr TONG suggested that the Administration should step up efforts to publicize the need and possible benefits of the new law, and explain the details including the scope of the new legislation, definition of specific types of anti-competitive conduct to be covered and the thresholds needed to be met before the regulatory authority invoked its investigatory power in order to help minimize malicious complaints against SMEs.

60. PS/ED re-iterated that the Administration would draw on the experience of overseas jurisdictions that had competition laws in place when drafting the legislation. In determining whether a particular type of anti-competitive conduct constituted an infringement of the competition law, many respondents took the view that conduct should be regarded as anti-competitive only if it had the purpose or effect of preventing, restricting or distorting competition. Such an approach would have the benefit of saving enforcement resources. She added that consideration would be given to including a general prohibition with examples of

anti-competitive conduct under the new legislation. SEDL added that when drafting the new law, the Administration would continue to engage SMEs in different discussion forums.

Scope of the cross-sector competition law

61. Mr Andrew LEUNG was concerned whether the scope of the new legislation would be limited to the proposals recommended by CPRC. He reflected the concerns of the business sector about the high compliance cost of the new regulatory regime, over-zealous regulation by the future regulatory authority and the need to guard against abuse of regulatory power.

62. PS/ED advised that the public discussion document had been drawn up on the basis of the key recommendations in CPRC's report. On the scope of the legislation, CPRC had recommended that the proposed new law should cover seven specific types of anti-competitive conduct. However, responses to the public consultation had revealed a broad consensus that whilst legal certainty and clarity were important, having an exhaustive list of specific offences might have a "strait-jacket" effect making the new law unnecessary rigid. A better approach might thus be to spell out in the law the broad general prohibition with examples of anti-competitive conduct. The regulatory authority would further clarify its understanding of the prohibition and give relevant examples in appropriate guidelines, to be drawn up after extensive consultation. Regarding the institutional framework, PS/ED said that the majority of respondents who commented on this aspect of the regulatory regime emphasized the need for appropriate checks and balances by separating the roles of enforcement and adjudication. Some stakeholders also commented that the regulator should be overseen by an independent, appointed board.

63. Mr Ronny TONG was concerned whether the Administration would allow exclusions and exemptions from the application of the law to certain sectors in order to secure support of the business community and political parties. He considered that exclusions and exemptions should not be provided lightly without sound justifications.

64. DS/ED1 advised that the competition laws in overseas jurisdictions had allowed exclusion or exemptions on public policy or economic grounds, or to avoid possible conflict with international obligations. According to the United Nations Conference on Trade and Development, such exemptions should be granted after consultation with the participation of the interested and affected parties and on a limited-time basis with provision for periodic review. He also briefed members on the conditions under which an exemption could be granted under the Competition Act 1998 of the United Kingdom.

65. Noting that some suppliers had complained about certain large supermarket chains abusing their dominant market position by restricting the suppliers to provide similar goods to other competitors in the market, Mr Fred LI enquired whether such conduct would be regarded as anti-competitive under the new

legislation and be subject to action by the regulatory authority in the future.

66. In response, PS/ED said that competition laws enacted in some overseas jurisdictions could regard conducts whereby suppliers were put under pressure to enter into contracts with grossly unfair terms in favour of the dominant player, as abuse of dominant position and hence an offence under the laws. However, as the definition of anti-competitive conduct to be covered by the new competition law in Hong Kong was yet to be decided, it would be premature to comment on whether a specific type of conduct would be regarded as anti-competitive. Nevertheless, PS/ED assured members that under the new competition law, the regulatory authority would issue relevant guidelines on the types and details of market behaviour which would constitute anti-competitive conduct. This would help provide clarity and certainty.

67. In reply to Mr Fred LI's further enquiry about the structure and funding of the regulatory authority, PS/ED advised that the authority would be an independent statutory body the financial provision for which would require the approval of the Legislative Council (LegCo). Making reference to a number of local and overseas regulatory authorities and on the assumption that the authority would have a full-time executive including professional legal, accounting and economic expertise, the new authority might require an annual budget in the range of \$60 million to \$80 million.

68. Mr James TIEN remarked that the Liberal Party had all along supported a fair competition environment in Hong Kong and the existing regulatory approach of enacting sector-specific competition law in certain sectors. He was concerned whether market behaviour such as rental arrangements in shopping malls, supermarket services, the electricity market, and the auto-fuel retail market would be subject to regulation of the cross-sector competition law. Citing the Smoking (Public Health) (Amendment) Bill 2005 as an example, he also expressed concern that the enacted competition legislation might have a wider scope than the relevant bill (the Bill) put forward by the Administration.

69. SEDL remarked that the Government did consider that there was no compelling case to introduce a general competition law in Hong Kong when establishing the COMPAG in 1997. However, having examined the competition regulatory regimes in major economies and reviewed the situations of various sectors in the local market, with the significant support received during the public consultation and in view of enforcement difficulties faced by COMPAG, the Administration considered that this was an appropriate time to introduce a cross-sector competition law in Hong Kong. SEDL highlighted that the proposed regulatory authority would be an independent body vested with statutory powers to conduct investigations into suspected anti-competitive behaviour and determine whether such conduct constituted an infringement of the competition law. He assured members that the scope of the new law would take into account the views received during the public consultation and the drafting stage.

The need to ensure confidentiality of information

70. The Chairman was concerned about the confidentiality of information in relation to complaints of anti-competitive conduct, including parties responsible for disclosure of information and their possible liability.

71. SEDL stressed that in dealing with suspected cases of anti-competitive conduct, the regulatory authority needed to protect various categories of confidential information which came to its knowledge on one hand, and to make appropriate disclosure in order to take forward an investigation when the circumstances so required. As such, there would be provisions under the new law prohibiting the disclosure of confidential information relating to the case concerned by complainants and other relevant parties.

Legislative timetable

72. In reply to Miss TAM Heung-man's enquiry about the legislative timetable, SEDL said that the Administration had already begun work on the drafting of the competition law. It was the Administration's target to introduce the relevant Bill into LegCo by the end of 2007.

73. Noting the Administration's legislative timetable above, Mr SIN Chung-kai expressed concern about the tight timeframe and cautioned that if scrutiny of the Bill could not be completed before the current LegCo term ended in July 2008, the Bill would lapse. To allow sufficient time for the public to comment on and LegCo to scrutinize such a complicated and controversial Bill, Mr SIN suggested that the Administration should consider publishing the Bill in the Gazette in July 2007 to facilitate public discussion during the summer.

74. SEDL highlighted the complexity of the proposed competition law, in particular on the need to address SMEs' concerns during the drafting process. He said that work had started on the Bill with a view to completing drafting as soon as possible. While it might take some time to gauge SMEs' views, the Administration would endeavour to introduce the Bill by the end of 2007, which would allow the Bills Committee concerned to examine the Bill over the following six months or so. Where appropriate, the Administration would consult the Panel on major aspects of the legislation during the drafting process.

VI Any other business

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