

立法會
Legislative Council

LC Paper No. CB(1)786/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/PL/EDEV/1

Panel on Economic Development

Minutes of meeting
held on Tuesday, 16 December 2008, at 10:45 am
in the Chamber of the Legislative Council Building

- Members present** : Hon Jeffrey LAM Kin-fung, SBS, JP (Chairman)
Hon Starry LEE Wai-king (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Fred LI Wah-ming, JP
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Albert CHAN Wai-yip
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Paul CHAN Mo-po, MH, JP
Hon Tanya CHAN
Hon IP Wai-ming, MH
Hon Mrs Regina IP LAU Suk-yeet, GBS, JP
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
- Member attending** : Hon LEE Wing-tat
- Members absent** : Hon Vincent FANG Kang, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP

**Public officers
attending**

: Agenda Item IV

Mr SO Kam-leung, Gregory, JP
Under Secretary for Commerce and Economic
Development

Ms Linda LAI, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)

Miss Wendy CHUNG
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)2

Agenda Item V

Mr Christopher WONG, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)

Ms Wendy CHEUNG
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)4

Mr SHUN Chi-ming
Acting Assistant Director
Hong Kong Observatory

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (1)6

Staff in attendance : Ms Angel SHEK
Senior Council Secretary (1)1

Ms Michelle NIEN
Legislative Assistant (1)9

Agenda item IV

Mr Timothy TSO
Assistant Legal Adviser 2

- I Confirmation of minutes and matters arising**
(LC Paper No. CB(1)324/08-09 - Minutes of meeting held on 24 October 2008)

The minutes of the meeting held on 24 October 2008 were confirmed.

- II Information papers issued since last meeting**
(LC Paper No. CB(1)315/08-09(01) - Tables and graphs showing the import and retail prices of major oil products from November 2006 to October 2008 furnished by the Census and Statistics Department)

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

- III Items for discussion at the next meeting**
(LC Paper No. CB(1)372/08-09(01) - List of outstanding items for discussion

LC Paper No. CB(1)372/08-09(02) - List of follow-up actions)

3. Members noted that the Administration proposed to brief the Panel on "Hong Kong Tourism Board Work Plan 2009-2010" at the meeting on 19 January 2009.

4. Mr Paul TSE proposed to discuss issues relating to the mechanism and remuneration system concerning the collection of airport passenger departure tax (APDT) and fuel surcharge. Referring to Hon Paul TSE's letter and the Administration's information paper (LC Paper Nos. CB(1)410/08-09 (01) & (02)), the Chairman opined that the collection of APDT and fuel surcharge by travel agents was a commercial deal between the airlines and travel agents. Mr TSE said that the Travel Industry Council (TIC), which was subject to Members' scrutiny, had played a role in the present mechanism.

5. Mr WONG Ting-kwong considered that the current arrangements provided much convenience to the travelling public and TIC should continue to facilitate the smooth communication between the airlines and travel agents. The Chairman suggested that he would discuss the matter with the Administration, TIC and Hon TSE after the meeting. Ms Emily LAU requested that the matter be reverted to the Panel after the discussion.

IV Report on the public consultation on the competition law

(Ref: CITB CR 05/62/25/13

— Administration's paper on Public Consultation on detailed proposals of a Competition Law (with the consultation paper) issued by Commerce and Economic Development Bureau (Legislative Council Brief)

LC Paper No. CB(1)372/08-09(03) — Administration's paper on public consultation on detailed proposals for a competition law

LC Paper No. CB(1)372/08-09(04) — Paper on the Introduction of a Cross-sector Competition Law in Hong Kong prepared by the Legislative Council Secretariat (Updated background brief)

Briefing by the Administration

6. At the invitation of the Chairman, the Under Secretary for Commerce and Economic Development (USCED) briefed members on the outcome of the three-month public consultation exercise launched in May 2008 on the detailed proposals for a competition law. He said that more than 170 written submissions were received and the Administration had compiled a report on the feedback, which was published on the website of the Commerce and Economic Development Bureau (CEDB). The response showed that there was still broad support in the community for the introduction of a competition law, although some respondents raised concerns regarding certain specific proposals. In the light of the feedback received from the public consultation, the Administration would consider modifying the original proposals. USCED introduced the Administration's initial views on possible areas for modification in respect of "institutional arrangements", "conduct rules", "merger regulation" and "exemptions" as set out in the Administration's paper (LC Paper No. CB(1)372/08-09(03)). Members noted that in addition to the public feedback on the extent of the powers of the Competition Commission (the Commission), the Administration would give regard to recent judgments made by the Court of Final Appeal (CFA) (in *Koon Wing Yee v Insider Dealing Tribunal and the Financial Secretary*) and the High Court (in *Luk Ka Cheung v Market Misconduct Tribunal*) respectively. The Administration was considering the implications of these two judgments on the competition law particularly in relation to the roles of the Commission and the Competition Tribunal (the Tribunal).

7. Referring to the Chief Executive (CE)'s 2008-2009 Policy Address that the Bill was expected to be introduced into the Legislative Council (LegCo) in the current legislative session, USCED remarked that notwithstanding a tight timetable, the Administration would continue to work closely with the Department of Justice

and a team of independent consultants in order to meet this target.

Discussion

Anti-competitive conduct and guidelines

8. Mr CHAN Kam-lam suggested that the types of conduct constituting an infringement should be clearly stated in the competition law to dispel uncertainties in the business sector and facilitate compliance.

9. Mr WONG Ting-kwong considered that there were still some grey areas in the legislative proposals and the small and medium enterprises (SMEs) remained concerned that they might fall foul of the new legislation. He considered it vital to first remove those grey areas, and enhance the understanding of the business sector and the public alike of the new law.

10. Recognizing that certainty was a key concern for the business sector, USCED apprised members that to improve the clarity of the law, the Administration would supplement the general prohibition against anti-competitive conduct with a non-exhaustive list of examples of such conduct, and consider making it a statutory requirement for the Commission to consult members of the community when drawing up its regulatory guidelines. Although the final format of the guidelines would be a matter for the Commission, the Administration planned to table draft guidelines for reference when introducing the Bill into LegCo.

11. Mr Paul TSE stressed the importance that the guidelines to be put in place had to be very clear as, given precedent overseas cases of heavy fine and penalty on companies for non-compliance of statutory rules, the business sector, in particular multi-national enterprises, was very sensitive and keen to differentiate which of their business conduct would culminate in anti-competition or otherwise just a contribution to improve the services.

12. The Chairman conveyed the view of the Hong Kong General Chamber of Commerce (HKGCC) that there was still a lack of clarity with regard to the scope and definition of certain anti-competitive activities, such as abuse of substantial market power, as well as agreements and concerted practices that had the purpose or effect of substantially lessening competition. The Administration should plug such loopholes in the current legislative proposals to allay the worries of SMEs and minimize potential conflicts arising from the future implementation of the new law.

13. USCED acknowledged the importance of ensuring greater clarity in the legislation and the merit of further consultation on the guidelines on examples of anti-competitive conduct. In view of the tight schedule of introducing the Bill, he considered it more practical and time-saving to undertake consultation on the guidelines concurrently with submission of the Bill to LegCo.

Institutional arrangements

14. Mr Paul TSE favoured the independent "two-tier" structure for enforcing the law. He considered that the investigative and adjudicative roles should be taken up by the Commission and the Tribunal respectively so as to avoid over-concentration of powers in one organization.

15. Mr WONG Ting-kwong shared this view. He also doubted how checks and balances could be achieved if all members of the Commission (and the Tribunal, if applicable) were to be appointed by CE. Having regard to the complexity of issues and workload involved, he sought whether the Administration would consider appointment of members for the Commission or the Tribunal on a full-time basis.

16. USCED reiterated that the Administration was in the process of adjusting and rationalizing the roles of the Commission and the Tribunal in the context of the current judicial framework, and in the light of the two recent judicial judgments. Panel members would be consulted on a revised proposal on institutional arrangements in due course.

Private action

17. Noting the recent judgments and their possible implications on the competition law, Mr Ronny TONG enquired whether the Administration would re-consider the legislative proposal to provide for the right to take private legal actions in respect of cases of anti-competitive conduct or even shelf them. He relayed the worries of SMEs that they might be vulnerable to legal actions initiated by large companies accusing them of engaging in anti-competitive conduct with a view to eliminating them from the market. Given the relatively small jurisdiction of Hong Kong that enabled it to discharge its legal functions effectively, he doubted the necessity of a provision for private action against anti-competitive conduct, especially when such a right could still be exercised under the common law framework.

18. USCED highlighted the three-faceted nature of private action under the competition law, which included "follow-on" action that sought compensation for loss or damage suffered as a result of anti-competitive conduct; "stand-alone" action that sought a ruling as to whether a breach of the conduct rules had taken place; and "representative action" which was to be taken on behalf of consumers or SMEs with the permission of the Tribunal. Although the common law practice might still provide for private actions against anti-competitive conduct, it was deemed appropriate to stipulate such rights directly under the competition law to supplement its public enforcement. While the Administration was inclined to provide for the right to take "follow-on" and "stand-alone" private actions, it would review the need to allow for "representative action" at the initial stage having regard to the concern raised by the business sector that the provision for "representative action" might lead to excessive litigation. USCED thanked Mr Tong's valuable opinions and noted that the Administration would further review the approach with regard to private action when drafting the Bill.

Penalties

19. Mr Albert CHAN expressed disappointment about the lenient approach and limited scope of the legislative proposals, particularly the weak deterrent effect of the proposed penalties. Imposing civil penalties with a fine only would have limited effect on the enterprises which might have already profited billion dollars by monopolizing the market. He sought the Administration's views on imposing criminal penalty to enhance the deterrent effect of the competition law.

20. USCED explained that as the introduction of a competition law would be a new step for Hong Kong, the Administration considered it appropriate to limit sanctions to civil penalties, on the assumption that fines set at an appropriate level would remove economic incentives to engage in anti-competitive conduct. In determining the nature and level of penalties, the Administration would exercise caution with regard to the existing legislative framework and proceedings. There was also a need to take on board the implications of the two recent judicial judgments and adjust the roles of the Commission and the Tribunal, so as to enhance the effectiveness of the competition law.

21. Mr Albert CHAN did not subscribe to the explanation. He considered it just a matter of policy to decide whether criminal penalties would be imposed on anti-competitive conduct. At the request of Mr Albert CHAN, the Assistant Legal Adviser 2 clarified that the Administration had proposed that infringement of the conduct rules should be subject to civil penalties only, although it could also have proposed to impose criminal sanctions.

22. Mr Paul TSE expressed concern about the issue of double penalty for infringement if the anti-competitive conduct pertained to more than one jurisdiction. The Deputy Secretary for Commerce and Economic Development (Commerce and Industry)¹ said that, subject to the merits of individual cases, it was a prevailing international practice that the jurisdictions concerned would agree among themselves which one of them would take over the investigation and trial if a case involved more than one jurisdiction. Noting this arrangement, Mr TSE further enquired if the Government would be inclined to let other overseas jurisdictions, which had more experience in regulating competition, take up the investigation and trial. USCED said that this had yet to be observed in the light of the actual experience in implementing the competition law in Hong Kong.

Merger regulation

23. Noting that clear majority support would be required for the inclusion of merger provisions, whereas such a criterion was not specified for other proposals, Mr Fred LI doubted the Administration's commitment in formulating a comprehensive and effective competition law, as reflected by the inadequacies of the current proposals in regulating merger activities. He expressed dissatisfaction that such omission would compromise the objective of promoting sustainable competition. He sought the Administration's explanation on the unique consideration for the merger provisions, with reference from overseas practices.

24. USCED responded that merger regulation was a feature of all major competition laws overseas. However, the Competition Policy Review Committee (CPRC) took the view that as Hong Kong's domestic market was relatively small, a high market concentration was inevitable in many sectors and might even promote economies of scale. Moreover, given the complexity of and time constraint in assessing merger activities, it would pose a significant challenge to the Commission if it had to shoulder such onerous burden at the outset of the implementation of the new law. Having regard to CPRC's recommendations, the Administration considered that the Commission should focus initially on anti-competitive conduct, rather than targeting market structures through the regulation of merger activities.

25. Mr Albert HO was disappointed to note that the legislative proposals had fallen far short of his expectation of a comprehensive and effective regulation in anti-competitive conduct. He was very surprised to note about the Government's inconsistent stance in respect of merger regulation, and it even seemed to consider merger activities could help promote economies of scale in Hong Kong. Since regulation of monopolies and mergers was fundamental in competition rules, he was gravely concerned that excluding merger provisions from the new law was a inconsistent with the legislative intent.

26. USCED highlighted the divided views of the public on the issue of whether or not the law should include merger provisions. Given the recommendations of CPRC, the concerns of the business sector and the lack of clear majority support for the inclusion of merger provisions, the Administration considered it more appropriate to focus initially on anti-competitive conduct at this stage.

27. Mr LEE Wing-tat said that it would not be justified to exclude merger provisions simply because of the concerns raised by the business sector, as the proposed competition law which aimed at enhancing competition by regulating the market would naturally draw resentment from the business sector, especially the large enterprises. He was worried that the Administration had succumbed to such pressure and withdrawn the merger provisions. In this connection, he sought the details of relevant views received during the consultation exercise with regard to merger regulation, especially whether there were objections from the large enterprises.

28. USCED clarified that the Administration maintained its firm position in driving forward a competition law for the benefit of the business sector and consumers alike. He said that the Administration had taken heed of the recommendation of CPRC made in June 2006 that the new law should not regulate mergers or "natural" monopolies at the initial stage. USCED further advised that about 170 written submissions were received during public consultation and only some expressed views on merger regulation. All the feedback collected through the consultation exercise had been publicized on the website of CEDB for the perusal of the public and members.

29. Mr LEE Wing-tat was not convinced. He considered it the responsibility of the Administration to clearly account for their policy for public monitoring, and hence, it should address members' enquiry and disclose relevant information at the meeting. Ms Emily LAU said that unless the respondents had stated otherwise, their views should be made open and attached to the Administration's paper for members' ease of reference.

Admin 30. Addressing members' concerns, USCED undertook to provide further information on written submissions received during the public consultation in respect of the three options for the way forward of the merger regime, with breakdown by categories and scale of operation.

(post-meeting note : The information provided by the Administration was circulated on 30 December 2008 vide LC Paper No. CB(1)494/08-09(01))

Exemptions and exclusions

31. Noting that certain statutory bodies would not benefit from the proposed exemption granted to government and statutory bodies from the application of the competition law, Mr Fred LI, Mr Albert CHAN and Mrs Regina IP sought tentative examples of statutory bodies that would and would not come under the exemption list. Mrs IP pointed out that although the types of services provided by some statutory bodies, such as the Airport Authority and Hospital Authority, were unique in the market, other statutory bodies were in effect competing business opportunities with other service providers unfairly with the advantages of having more resources. For example, the Trade Development Council (TDC) had been competing with SMEs for exhibition venues, whereas the Hong Kong Productivity Council for consultants' services. Mrs IP urged the Administration to give due consideration in drawing up the list of exempted statutory bodies.

32. Mr Albert HO shared similar concern and cited Hong Kong Mortgage Corporation Limited as another example of statutory body that should be subject to regulation.

33. Referring to the pilot scheme for the Mainland-authorized Hong Kong travel enterprises to organize group tours for eligible non-Guangdong residents in Shenzhen to visit Hong Kong, Mr Paul TSE noted that the Hong Kong Disneyland (HKD) was included in the itinerary which might constitute unfair advantages to HKD. He was concerned that in granting exemptions, the Government should not side with ventures in which it had invested. USCED clarified that HKD was not a statutory body, hence it would be subject to regulation under the proposed competition law.

34. While sharing the view that the Administration should consider carefully when granting exemptions to statutory bodies, Mr CHAN Kam-lam said that a balance should be struck to protect the interests of consumers and service users so that they would continue to benefit from the provision of services provided by statutory bodies at relatively low costs.

35. Mrs Regina IP said that statutory bodies did not necessarily offer a cost for services lower than that of their private counterparts, but their market practices might culminate in disadvantages to other service providers. For instance, TDC might block-book convention and exhibition venues in prime seasons or set a high entry threshold for exhibition participation. She hoped that the Administration would take these concerns into consideration in assessing whether an exemption should be granted to a statutory body.

36. USCED explained that the Administration intended to stipulate that the law did not apply to statutory bodies except where otherwise specified, which would allow the Administration to list in a Schedule to the law the statutory bodies that would not benefit from the overall exemption. There was a host of factors for granting exemptions, including how far the economic activities, if any, could be separated from the core services of the statutory body; the extent of such economic activities in affecting market competition and efficiency; whether the activities carried overriding public interests; and the degree of autonomy of the statutory body. The Administration would maintain an open attitude regarding which statutory bodies should come under exemption, having regard to public response and members' suggestions.

Way forward

37. Mr CHAN Kam-lam noted that while there was broad support in the community for the introduction of a competition law, the business sector remained concerned about the potential impact of the legislation on the market, notwithstanding its merits of eliminating market monopoly and enhancing competition. In view of the tough business environment faced by the trades and enterprises at a time of economic downturn, Mr CHAN suggested the Administration to re-assess the situation for the implementation of the competition law. Consideration might be given to introducing the law by stages, focusing initially on those sectors or areas particularly prone to anti-competitive behaviour, and gradually extending the coverage to all sectors and areas of concerns. This would allow the Administration to review its implementation and fine tune the provisions, while the business sector was taking time to adapt to the new law. He also reminded the Administration to allow adequate time for deliberation and consideration of the Bill by LegCo.

38. Mr WONG Ting-kwong conveyed the views of Members of the Democratic Alliance for the Betterment and Progress of Hong Kong that any measures pertaining to regulation of anti-competition conducts should be fair and transparent, and conducive to enhancing economic efficiency and protection for consumers. Besides, the new law should be introduced only when there was a general consensus in the community supporting the legislation.

39. Mr Fred LI expressed grave concern about the excessively prolonged duration taken by the Government in driving forward the competition law, as the Competition Policy Advisory Group had already been established for more than a

decade. He considered that the competition law was unrelated to the prevailing economic situation and its implementation should not be held back due to the present economic downturn. He disagreed with Mr CHAN Kam-lam's suggestion to implement the legislation in phases. In particular, he considered it retrogressive to apply the legislation only in some specific sectors at the outset of implementation, given that it was essentially the goal of the current legislative proposals to introduce a "cross-sector" competition law as recommended by CPRC.

40. USCED highlighted the importance of conducting continuous consultation comprehensively with relevant stakeholders during the drafting and scrutiny of the Bill. To ensure the effective implementation of the competition law, the Administration would maintain close dialogue with the business sector as the new law would inevitably affect their operation, and review the timing of the implementation of the legislation accordingly. In particular, sufficient lead time should be allowed for the business sector to prepare for the implementation of the new law. He also drew members' attention to the fact that the current approach had already given regard to introducing the competition law in a gradual manner. For instance, the need to add merger provisions would be re-considered after a review of the effect of the new law.

41. Ms Emily LAU drew members' attention that the Consumer Council had recommended the enactment of a general competition law in Hong Kong as far back as 1996. As it seemed to her that some members had changed their stance in supporting the introduction of the competition law, she was very concerned that the Administration would revise the implementation timetable accordingly.

42. Mr Albert CHAN was keen to ensure that the Administration would not waver in its stance for a more comprehensive and effective competition law. Notwithstanding the divided public views, he said that most of the SME operators he had come across showed support for the new law that would contribute to fair competition. Citing precedent cases in which the Government failed to push through legislative proposals in face of pressure and objection from large business enterprises, he stressed the need for the USCED to act on realizing CE's pledge in his Policy Address for taking forward the competition law. In his view, it would be a negligence of the Administration if the provisions of the new law turned out to be inadequate and defective.

43. Mr Albert HO remarked that he failed to see why the new law should be implemented by stages, which should not be used in anyway to justify the delay in the formulation and implementation of the new law. He said that the Administration should complete modifying the original proposals as soon as practicable so as not to jeopardize the schedule for introducing the Bill into LegCo in the current session.

44. The Chairman conveyed that HKGCC considered that the provisions for a competition law should be concise and clear, and facilitate a business-friendly environment on the principle of "big market, small government". He said that HKGCC and the business sector considered it inappropriate to take the legislation

forward if it was not flawless. Given the many concerns raised by the business sector and a worsening business environment, the Administration should fine tune the legislative proposals and take forward the competition law in a gradual manner, so as to give the business sector more certainty, in particular to allay their concerns about excessive litigation that might be brought about by the new law. To this end, the Chairman urged the Administration to conduct more comprehensive consultation, and where necessary, vary the engagement format to gauge the views of different stakeholders.

45. Mr CHAN Kam-lam opined that it was understandable that the business sector had worries about the competition law. He pointed out that the objective of the competition law was to target at anti-competitive conduct, irrespective of the scale of operation of the enterprises concerned. There should not be biased preconceptions against the large enterprises or the business sector as a whole.

46. USCED said that soon after the public consultation exercise had ended in August 2008, the Administration had swiftly compiled the report on the feedback, and commenced the drafting of the Bill in the light of the feedback received during the public consultation. He assured members that the Administration had proactively and expeditiously acted on the drafting work, and it would strive in its best efforts to introduce the Bill into LegCo in the 2008-2009 session. He clarified that the Administration had not revised the implementation timetable. However, having regard to the two judicial judgments, more time would be required to consult the public and conduct a review of the proposed institutional arrangements.

V Proposal to replace and upgrade meteorological facilities for the Hong Kong International Airport: A funding proposal

(LC Paper No. CB(1)372/08-09(05) — Replace and upgrade meteorological facilities for the Hong Kong International Airport

Briefing by the Administration

47. At the invitation of the Chairman, the Deputy Secretary for Commerce and Economic Development (Commerce and Industry)² (DS/CED(C&I)²) briefed members on the justifications underlying the Administration's funding proposal to replace and upgrade meteorological facilities for the Hong Kong International Airport (HKIA), including the ageing of equipment in use since 1998, and the need to maintain and enhance weather services for the airport in the interest of ensuring aviation safety. With the aid of power-point presentation, the Assistant Director, Hong Kong Observatory (AD/HKO) apprised members of the technical aspects of the proposal to replace the Terminal Doppler Weather Radar (TDWR) and other meteorological and infrastructural facilities, and also the financial implications and implementation plan. Members noted that the Administration intended to submit the funding proposal to the Finance Committee for approval in early 2009.

Discussion*TDWR and other meteorological and infrastructural facilities*

48. Noting that the TDWR and other facilities would not be installed until 2015, Mr Albert CHAN was concerned that it took seven years from now before the ageing meteorological equipment could be replaced. DS/CED(C&I)2 clarified that it was the Administration's current plan to put the new TDWR in place in 2013. To tie in with the commissioning of the new air traffic control (ATC) system developed by the Civil Aviation Department (CAD), the other meteorological facilities would be installed in phases between 2012 and 2015. He added that subject to repair and maintenance, the normal serviceable life of most of the meteorological facilities was between 10 to 15 years. The current work programme would allow the existing ageing facilities to be replaced in time.

49. Mr Albert CHAN asked about the extent to which the new TDWR would enhance the delivery of windshear warnings, which was of paramount importance to ensure aviation safety. Sharing similar concern, Mrs Regina IP expressed support for the proposal and considered that ageing meteorological facilities should be replaced and upgraded.

50. AD/HKO advised that after the new TDWR was in place, the existing one would be turned into a backup system. This would help ensure uninterrupted provision of windshear alerts, apart from enhanced reliability. As regards other enhancements in aviation-specific weather services, he cited one example currently under contemplation, namely an improved system that would provide more comprehensive advice to ATC personnel and pilots about expected weather changes along the flight paths, mitigating flight delays due to thunderstorms. DS/CED(C&I)2 added that the improved system would allow development of aviation-specific weather services that covered a much wider geographical area than was currently the case.

51. In reply to Mr CHAN Kam-lam, AD/HKO confirmed that the backup TDWR would be used only when necessary, such as when the new TDWR was suspended from services for repair and maintenance. On other aviation-specific weather services to be enhanced, AD/HKO said that the new facilities would also provide enhanced weather information on wind speed and direction which would facilitate the "approach sequencing" made by CAD in directing aircraft movement.

52. Noting that the average annual unserviceable time of the present TDWR had increased from 27 hours for the period 2000-2003 to 47 hours for the period 2004-2007, Mr Paul TSE asked about the reasons for the increase. He was concerned that the system might have already deteriorated to a level that would endanger aviation safety.

53. AD/HKO assured members that for the existing TDWR, HKO would try to upkeep its reliability by conducting more frequent maintenance checks and

extending the search for potential suppliers of possible replacement components. He added that when the TDWR was out of service, HKO could still detect windshear and provide warnings manually using other meteorological facilities at HKIA but such a mode of operation would be less effective than the automatic mode of operation under the TDWR, particularly under rainy conditions.

54. Given that maintenance work for the present TDWR had become increasingly difficult as many components were already out of production, Mr IP Wai-ming enquired whether the Administration could expedite the development of the new TDWR. He was also concerned about aviation safety in using the present TDWR as a backup system.

55. DS/CED(C&I)2 remarked that the Administration was keen to commence the operation of the new TDWR as early as possible. The TDWR was a high-tech facility which required much professional input in tender preparation and assessment, as well as in the actual construction and installation. As such, it was anticipated that 2013 would be the earliest time that the new system could be put in place.

56. The Chairman expressed concern that failure in detecting windshear would affect the aviation safety and flight schedule. He asked about past cases where windshear incidents were detected by pilots who had not received relevant warnings issued by HKO.

57. AD/HKO advised that HKO was able to detect and issue warnings in advance for more than 90% of windshear incidents reported by pilots, which compared favourably with the international standard. HKO would endeavour to further enhance the reliability of the TDWR. In reply to the Chairman's further enquiry, DS/CED(C&I)2 advised that the current estimates for the proposal already included expenditure to cover upgrading of the meteorological facilities.

Staffing implications

58. Noting that the proposal would involve six non-directorate posts, including three time-limited non-directorate posts, Ms Emily LAU sought information on the detailed costs for the non-directorate civil service posts, and the tasks to be undertaken by the six staff members.

59. DS/CED(C&I)2 advised that the annual recurrent staff cost for the three non-directorate civil service posts was about \$2.2 million. At the beginning, the six staff would work as a team in overseeing the planning and installation of the proposed facilities. The three time-limited posts would lapse upon the commissioning of the new meteorological facilities, while the three civil service staff would take up ongoing responsibilities associated with the development of enhanced aviation-specific weather services, as well as the maintenance, and continuous improvements to the operation of the back up/new facilities.

60. Ms Emily LAU considered that the Administration should provide more

information to justify the creation of the additional staff. Mr Paul TSE said that as the present TDWR was currently supported by a group of existing staff, he did not see the need to create additional non-directorate posts for the purpose.

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61. DS/CED(C&I)2 advised that at present, 60 staff in HKO were deployed for the provision of aviation specific weather services for HKIA. Most of the staff currently providing support to the existing TDWR would be deployed to operate the new TDWR. Staffing for the backup TDWR would be kept to the minimum necessary. As the new and additional facilities in the pipeline would require enhanced manpower support, HKO hence proposed to create three civil service posts to help absorb ongoing responsibilities related to the development of new services, and the maintenance, and continuous improvements to the operation of the back up/new facilities. At the request of Ms Emily LAU and Mr IP Wai-ming, DS/CED(C&I)2 agreed to provide further information on the details of the workload involved to justify the proposed creation of three time-limited non-directorate posts and three non-directorate civil service posts for the implementation of the new meteorological facilities for HKIA.

(post-meeting note : The information provided by the Administration was circulated to members vide LC Paper No. CB(1)517/08-09(01) on 9 January 2009)

62. Mr Albert CHAN enquired whether HKO would consider contracting out the repair and maintenance for the proposed meteorological facilities, instead of creating new posts. AD/HKO advised that HKO needed to maintain close dialogue with the stakeholders in ensuring that the new meteorological facilities would meet the requirements of CAD and the aviation community. As such, it was not appropriate to outsource the repair and maintenance work for the new facilities to outside parties because they might not possess the required professional knowledge and expertise.

Conclusion

63. Summing up, the Chairman said that the Panel supported the proposal and urged the Administration to expedite the replacement and upgrading of meteorological facilities for HKIA.

VI Any other business

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