

For Information on
30 March 2009

LEGISLATIVE COUNCIL PANEL ON ECONOMIC DEVELOPMENT

PROGRESS ON THE PREPARATION OF THE COMPETITION BILL

Purpose

This paper briefs Members on the latest progress of the preparation of the Competition Bill and the revised legislative timetable.

Background

2. The Government intended to introduce the Competition Bill into the Legislative Council in the 2008-09 legislative session and has been striving hard to achieve this target, while keeping track of some recent legal developments which might affect the Competition Bill. Since our last report to the Economic Development Panel in December 2008, we have also been reviewing comments raised during the latest public consultation exercise. We now consider that we would need more time to prepare the details of the institutional framework and the exemptions provisions in the Bill and have to revise the schedule for the introduction of the Competition Bill to the 2009-2010 legislative session.

Latest development

(a) Institutional arrangement

3. The original design of the institutional framework as proposed in the public consultation document was to adopt a civil administration model comprising the Competition Commission and the Competition Tribunal. The Competition Commission was to investigate, make determinations of

breach of the competition rules and to impose a wide range of sanctions including a maximum fine of up to \$10 million or 10% of the turnover¹ during the period when the infringement occurred. The Competition Tribunal was to hear applications for review of the Competition Commission's decision and to impose a full range of remedies and to hear private rights of actions.

4. When we consulted the public last year on the details of the proposed Competition Bill, some respondents considered that the proposal to give the Competition Commission powers to adjudicate on infringements and impose remedies in addition to its investigative role amount to a concentration of too much power in one place. In addition, some recent judicial decisions also have an impact on the institutional arrangement of the Competition Bill. We are considering changing the original civil administration model for the enforcement of the Competition Bill, to a judicial model.

(b) Exemptions and exclusions

5. In our paper to the Economic Development Panel in December 2008, we mentioned that the Competition Bill should not apply to government activities and will not apply to statutory bodies unless otherwise specified by listing the 'non-exempted' statutory bodies in a Schedule to be subject to vetting by the Legislative Council. To work out the Schedule of 'non-exempted' statutory bodies, we are now reviewing the activities of each one of them. Given the scale of the review and the substantial number of statutory bodies involved, we need more time to prepare the list and the definition on 'statutory bodies' for inclusion in the Competition Bill.

Way forward

6. It is important that the Competition Bill is able to deal effectively with anti-competitive conduct. In view of the latest developments mentioned above, we have to adjust the legislative timetable for the Bill. We are now working closely with relevant parties within the Government to resolve the technical, legal and policy issues with a view to introducing the

¹ The Competition Commission should apply to the Competition Tribunal to impose a fine of up to 10% of the turnover if the actual fine is higher than \$10 million.

Bill as soon as practicable in the 2009-2010 legislative session.

Members' views

7. Members are invited to note the latest progress of the preparation of the Bill.

Commerce and Economic Development Bureau
23 March 2009