

**立法會**  
**Legislative Council**

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**Bills Committee on Competition Bill**

**Minutes of fourth meeting on  
Tuesday, 30 November 2010, at 4:30 pm  
in the Chamber of the Legislative Council Building**

**Members present** : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)  
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)  
Hon Albert HO Chun-yan  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Hon LEE Cheuk-yan  
Dr Hon Margaret NG  
Hon CHAN Kam-lam, SBS, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Miriam LAU Kin-yeet, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon WONG Kwok-hing, MH  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon WONG Ting-kwong, BBS, JP  
Hon Starry LEE Wai-king, JP  
Dr Hon LAM Tai-fai, BBS, JP  
Hon CHAN Hak-kan  
Hon Paul CHAN Mo-po, MH, JP  
Hon CHAN Kin-por, JP  
Dr Hon LEUNG Ka-lau  
Hon CHEUNG Kwok-che  
Hon WONG Kwok-kin, BBS  
Hon IP Kwok-him, GBS, JP  
Hon Mrs Regina IP LAU Suk-yeet, GBS, JP  
Hon Paul TSE Wai-chun  
Dr Hon Samson TAM Wai-ho, JP  
Hon Alan LEONG Kah-kit, SC

Hon LEUNG Kwok-hung  
Hon WONG Yuk-man

**Members absent** : Hon Fred LI Wah-ming, SBS, JP  
Hon James TO Kun-sun  
Hon Emily LAU Wai-hing, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon CHIM Pui-chung  
Prof Hon Patrick LAU Sau-shing, SBS, JP  
Hon Cyd HO Sau-lan  
Dr Hon Priscilla LEUNG Mei-fun  
Hon Tanya CHAN  
Hon Albert CHAN Wai-yip

**Public Officers attending** : Agenda item I  
  
Mr Gregory SO Kam-leung, JP  
Under Secretary for Commerce and Economic Development  
  
Ms Linda LAI Wai-ming, 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)

**Attendance by invitation** : Agenda item I  
  
Consumer Council  
  
Mr Victor HUNG  
Chief Research and Trade Practices Officer  
  
Hong Kong Construction Association  
  
Ms Alice TO  
Legal Advisor

Federation of International SME

Mr Gary LO  
President

The Hong Kong Metals Manufacturers Association

Mr Michael L. YU  
Honorable Chairman

The Professional Validation Council of Hong Kong Industries

Mr LAU Chi-wai  
Executive Vice President

Hong Kong Institute of Patent Attorneys

Mr Benny KONG  
Vice-Chairman

Hong Kong Brands Protection Alliance

Mr Flint CHAN C.E.C.  
President

Hong Kong Watch Manufacturers Association

Mr Kenneth WONG  
Vice President

Savantas Youth Service Group (Southern District)

Mr Matthew WONG  
Committee Member

Savantas Policy Institute

Ms Germaine LAU  
Senior Policy Analyst

League of Social Democrats

Mr YUNG Lok-ki  
Deputy Secretary General

HK & KLN Plastic Products Merchants United  
Association Ltd.

Mr Raymond CHAN  
Vice Chairman

D Dong

Mr Ken TSANG  
Chairman

The Hong Kong Institute of Architects

Ms Anna S Y KWONG  
President

Community Development Initiative

Mr Henry CHIU  
Policy Researcher

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

**Staff in attendance :** Mr Timothy TSO  
Assistant Legal Adviser 2

Ms Diana WONG  
Senior Council Secretary (1)8

Mr Ken WOO  
Council Secretary (1)2

Ms Michelle NIEN  
Legislative Assistant (1)9

**I Meeting with deputations and the Administration**

The Bills Committee exchanged views with deputations and the Administration (Index of proceedings attached at **Appendix**).

2. Mr Ronny TONG requested the Administration to explain how the major prohibitions would be enforced if the undertakings concerned in fact did not carry out an agreement, decision or concerted practice which had as its object to prevent, restrict or distort competition in Hong Kong. The Chairman requested the Administration to provide a written response before the relevant meeting at which the subject on "Major prohibitions, exclusion and exemption" would be discussed.

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on 9 December 2010, at 2:30 pm.

**II Any other business**

4. There being no other business, the meeting ended at 6:20 pm.

**Proceedings of the fourth meeting of  
Bills Committee on Competition Bill  
on Tuesday, 30 November 2010, at 4:30 pm  
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000844 – 000926	Chairman	Opening remarks	
000927 – 001247	Consumer Council (CC)	Presentation of views (CB(1)633/10-11(01))	
001248 – 001659	Hong Kong Construction Association	Presentation of views (CB(1)516/10-11(23) and CB(1)633/10-11(02))	
001700 – 001826	Federation of International SME (FISME)	FISME expressed reservation on the Bill but upheld the spirit of anti-monopoly law. FISME also raised the following concerns –  (a) the proposed private rights of action might be abused by large consortia which used them to harass Small and Medium Enterprises (SMEs), as in the case of Singapore; and  (b) guidelines and clearer legal provisions should be provided to ensure a level-playing field for the business sector, in particular SMEs.	
001827 – 002129	The Hong Kong Metals Manufacturers Association (MMA)	Presentation of views (CB(1)516/10-11(24))	
002130 – 002417	The Professional Validation Council of Hong Kong Industries (PVCHK)	PVCHK expressed that it did not support the Bill for its lack of clarity and legal certainty as the interpretation of the conduct rules would be determined by the proposed Competition Commission (the Commission). PVCHK further considered that the Government should enact sector-specific competition law targeting at those sectors prone to monopoly before introducing a cross-sector regime. PVCHK also expressed the following concerns –  (a) large consortia might abuse the proposed private actions and used them to harass SMEs;  (b) certain statutory bodies currently providing services to SMEs, such as the Trade Development Council or Hong Kong Productivity Council, should be exempted from the Bill; and  (c) SMEs, being part of the business sector and very experienced, would not be misled to object to the Bill.	

Time marker	Speaker	Subject(s)	Action required
002418 – 002828	Hong Kong Institute of Patent Attorneys (HKIPA)	Presentation of views (CB(1)516/10-11(25)). HKIPA also highlighted the implementation experience of Singapore, in which SMEs and trade associations outnumbered large consortia in being found in contravention of the competition rules, and the scope for calculation of pecuniary penalty was confined to local rather than global turnover of the undertakings concerned.	
002829 – 003033	Hong Kong Brands Protection Alliance (HKBPA)	HKBPA expressed strong objection to the Bill but upheld the spirit of anti-monopoly law. HKBPA expressed concern that its works on fighting against infringement of brand names and intellectual property rights would be affected with the enactment of Bill as non-member organizations might take it to the court for monopolistic operation. He refuted that SMEs had been misled to object to the Bill.	
003034 – 003432	Hong Kong Watch Manufacturers Association (HKWMA)	HKWMA expressed objection to the Bill but upheld the spirit of anti-monopoly law. HKWMA opined that the Bill would be of little help to improve the business environment for SMEs and might even subject SMEs to unnecessary risk of legal proceedings for, say, having discussed rising operation cost and product price. HKWMA called for a sector-specific competition regime and considered that the Bill should be shelved.	
003433 – 003754	Savantas Youth Service Group (Southern District) (SYSG)	SYSG expressed concern that in the absence of a definition of "market" under the Bill, the policy of free trade might be undermined, and suggested that reference be made to overseas practices to come up with a concrete definition of "market". SYSG referred to a recent case in which the Court of Appeal overturned the convictions of 17 stallholders being charged with conspiracy to defraud for agreeing not to bid against each other at an auction for spaces in a new market and the decision was subsequently upheld by the Court of Final Appeal. It expressed concern that these activities would be regulated under the Bill.	
003755 – 004222	Savantas Policy Institute	Presentation of views (CB(1)633/10-11(03))	
004223 – 004712	Chairman League of Social Democrats (LSD)	While sharing the worries of SMEs, LSD expressed concern that consumer protection was not explicitly stated in the Bill. Noting that if the Commission was satisfied that a particular category of agreement was an excluded agreement, it might issue a block exemption order in respect of that category of agreement, and the Commission might, either of its own volition or on application by an undertaking or an association of undertakings, issue a block exemption order (clause 15), LSD was very concerned about the power of the Commission and considered that such orders should be subject to LegCo's scrutiny. LSD also requested that the Bill (proposed section 2(2) of Schedule 5) should be amended by stipulating that at least	

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		one representative each from SMEs and consumers should be appointed as members of the Commission.	
004713 – 005148	HK & KLN Plastic Products Merchants United Association Ltd. (PPMUA)	PPMUA expressed objection to the Bill and raised concern that even day-to-day business decisions and agreements might easily fall foul of the proposed conduct rules, hence creating costly compliance burden for them.	
005149 – 005434	D Dong	Presentation of views (CB(1)633/10-11(04))	
005435 – 005641	The Hong Kong Institute of Architects (HKIA)	Presentation of views (CB(1)633/10-11(05)). HKIA held the view that being a professional body, it should enjoy the status of a statutory body and be given full exemption from the Bill.	
005642 – 010124	Community Development Initiative (CDI)	Presentation of views (CB(1)633/10-11(06)). CDI urged that the enactment of the Bill should be expedited.	
010125 – 010613	Chairman Mr WONG Kwok-hing CC Administration	<p>Mr WONG Kwok-hing pointed out that a number of SMEs had expressed deep concerns about the Bill. The Administration stressed that the Bill would prohibit the abuse of a substantial degree of market power in a market. This would facilitate easier market entry by SMEs, thereby enhancing economic efficiency and fostering innovation. The new law would therefore benefit rather than harm SMEs. It further assured members that the "de minimis" approach and the relevant market share level to be included in the guidelines that would be issued by the Commission would help allay the worries of SMEs.</p> <p>In response to Mr WONG's enquiry, CC advised that according to overseas experience, for example, in Indonesia, the enactment of Competition Law helped bring down the prices of telecommunications services and auto-fuels as well as products sold in supermarkets. At the Chairman's request, CC agreed to provide information in this regard.</p>	
010614 – 010859	Chairman Mr Ronny TONG Administration	Noting that SMEs in Hong Kong had reservation about the Bill, Mr Ronny TONG highlighted that Competition Law in overseas was well received by the SMEs. He stressed that the Bill aimed at prohibiting anti-competitive conduct that might prevent, restrict or distort competition in Hong Kong, which in his view could hardly be contravened by SMEs. He considered the Bill less stringent than anti-monopoly law which related to the stake position of individual undertaking. As a matter of fact, Hong Kong had already had competition law in place in specific sectors. The competition provisions in the Telecommunications Ordinance (Cap. 106) had enabled Hong Kong to provide telecommunications services at the	

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		<p>best competitive prices among international cities.</p> <p>In response to Mr TONG, the Administration advised that there were limited number of stand-alone private cases related to competition reported in overseas and the concerns about large businesses abusing the system of private actions was not substantiated by international experience. As such, SMEs in Hong Kong should not be over-worried.</p>	
010900 – 011205	Chairman Mrs Regina IP Administration	<p>Highlighting that it was established practices to set up technical standards and patent rights in the course of high technology development to ensure standard and protect intellectual property, Mrs Regina IP was concerned that these might be seen as limiting or controlling technical development and restricting competition under the Bill.</p> <p>The Administration responded that patent and licensing arrangements in high technologies and the Competition Law would in fact complement each other as both of them sought to foster innovation.</p>	
011206 – 011519	Chairman Mr Albert HO Administration	<p>Mr Albert HO stressed that the objective of the Bill was to prevent market monopoly by large consortia in order to help SMEs sustain viability. While the Commission would issue the guidelines on interpretation and implementation of the proposed conduct rules, the Bills Committee would take prudence in scrutinizing the Bill, in particular the part relating to exemption, to ensure that it would not impede free trade. Mr HO agreed that the block exemption orders to be issued by the Commission should be subject to LegCo's scrutiny.</p>	
011520 – 011831	Chairman Mr WONG Ting-kwong Administration	<p>As the Bill was formulated in response to the public call for a law to guard against monopoly and promote fair competition, Mr WONG Ting-kwong was concerned whether the Bill would facilitate the development of SMEs in various markets, in particular those markets which had been the target of criticism such as air services, auto-fuel and supermarkets.</p> <p>The Administration indicated that it could not assume that anti-competitive conduct was occurring in a particular industry but believed that the enactment of the Bill would enable enforcement against anti-competitive conduct to serve public interest and create a level-playing field for the business sector. Mr WONG expressed concern that without a clear target, the SMEs might be hard hit by the new law.</p>	
011832 – 012427	Chairman HKIA Administration PPMUA HKIPA	<p>Noting HKIA's view that it should be exempted from the Bill, the Chairman was concerned whether the role played by HKIA in collecting membership fee, issuing licence etc was an engagement in economic activity that should be subject to regulation under the Bill.</p>	

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	CC	<p>HKIA expressed concern that while the Institute was the licensing body for local architects, it should not be seen as monopolizing the industry and should therefore enjoy full exemption from the Bill.</p> <p>PPMUA remarked that the business sector was very concerned about the cost burden of legal proceedings.</p> <p>CC advised that the Bar Association in Taiwan was recently found in contravention of the competition law for engaging in the concerted practice of price fixing.</p> <p>The Administration explained that a professional institute or trade association might contravene the first conduct rule if it agreed to fix a price for the same service/product provided by individual members. Key elements of the guidelines on the interpretation and implementation of the proposed conduct rules would be ready when the Bills Committee discussed the subject. Separately, the Administration was working on its proposals on which statutory bodies or their activities would be brought under the purview of the Bill and would brief the Bills Committee in early 2011.</p> <p>HKIPA considered that exemptions from the Bill should be granted at the same time when the Bill was enacted and the Bill should clearly set out the factors of consideration for exemption granted under it.</p>	
012428 – 012849	Chairman Ms Miriam LAU Administration	<p>Ms Miriam LAU expressed concern that the guidelines to be issued by the Commission would be general guidelines that might not be able to address the concerns of SMEs in specific trades.</p> <p>The Administration assured members that the Commission, which would comprise members in a diversity of sectors including SMEs, would issue the guidelines in consultation with persons it considered appropriate. Sample guidelines would be provided when the Bills Committee discussed the subject relating to the proposed conduct rules. The Administration further advised that there was a flexibility to stagger commencement of different parts of the Bill so as to allow a transitional period to enable the business community to get familiar with the new law and make necessary adjustments.</p> <p>Ms Miriam LAU expressed concern that in the absence of the guidelines, it was difficult for members to support the Bill. The Administration explained that according to the international best practice, it was more flexible to provide the interpretation and implementation of the conduct rules in the guidelines than in the principal ordinance so as to capture the rapid changes in market landscape.</p>	

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012850 – 013310	Chairman Mr Ronny TONG HKIPA	<p>In response to the concerns raised by Mr WONG Ting-kwong, Mr Ronny TONG remarked that after the Bill was enacted, the Commission could intervene if the air services or auto-fuel industries engaged in concerted practice of price fixing; or the supermarket abused its market power and restricted competition. He further considered that some requirements in the Code of Conduct issued by the Hong Kong Bar Association might restrict competition and need to be amended upon the enactment of the Bill.</p> <p>HKIPA noted that while anti-monopoly was the common goal, the title of Bill did not reflect this clearly. Mr TONG recalled that he had requested the Administration not to include private actions in the Bill but consider introducing it at a later stage.</p>	
013311 – 013630	Chairman Dr Margaret NG	<p>Dr Margaret NG thanked deputations' views, in particular those expressed by PPMUA. She considered that the Administration should step up efforts in clarifying the misunderstanding or misconception expressed by SMEs. Dr NG assured deputations that she would exercise due diligence in scrutinizing the Bill to ensure that it, if enacted, would serve public interests.</p>	
013631 – 014407	Chairman Mr Paul TSE Administration FISME LSD Mr Ronny TONG	<p>Mr Paul TSE sought clarification whether SMEs would contravene the proposed first conduct rule if the object of their agreement, concerted practice or decision was to prevent, restrict or distort competition.</p> <p>The Administration advised that the Bill had adopted a "general prohibitions" approach instead of a "<i>per se</i> infringement" approach and it sought to prohibit and deter "undertakings" in all sectors from adopting abusive or other anti-competitive practices which had the object or effect of preventing, restricting or distorting competition in Hong Kong.</p> <p>The Administration considered that the object or effect of the conduct could be assessed objectively. Mr TSE did not agree and considered that the object was subjective and could be drawn by inference. The Chairman agreed with SMEs' views that the Bill should aim to guard against market monopoly.</p> <p>Mr Ronny TONG requested the Administration to explain how the major prohibitions would be enforced if the undertakings concerned in fact did not carry out an agreement, decision or concerted practice which had as its object to prevent, restrict or distort competition in Hong Kong. The Chairman requested the Administration to provide a written response before the relevant meeting at which the subject would be discussed.</p>	<p>The Administration to provide information as requested in paragraph 2 of the minutes.</p>

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		FISME urged that the Administration/Bill should assist SMEs which might face lawsuits initiated by large consortia.	
014408 – 015122	Chairman MMA Administration PVCHK HKIPA	<p>MMA highlighted the worries of SMEs about unjustified litigation and considered that the Bill should not provide for private actions. It also called for a sector-specific approach in implementing the competition law and the need to protect local markets.</p> <p>The Administration advised that the Commission might decide to use sector-specific market share approach in the "de minimis" mechanism. The Administration further advised that in addition to private actions followed on from a court determination, there were also "stand-alone" actions seeking judgment on particular conduct and remedies. Nevertheless, the Administration would continue to hear public views and was open to the suggestion of excluding "stand-alone" private actions from the Bill.</p> <p>PVCHK opined that small business operators might institute legal proceedings on behalf of large consortia against SMEs.</p> <p>HKIPA highlighted the cost burden of private actions on SMEs.</p>	
015123 – 015145	Chairman Administration	Date of next meeting	