

立法會
Legislative Council

LC Paper No. CB(1)2142/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/12/09

Bills Committee on Competition Bill

**Minutes of eleventh meeting on
Tuesday, 29 March 2011, 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 LEE Cheuk-yan
Hon Fred LI Wah-ming, SBS, JP
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Cyd HO Sau-lan
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 Paul TSE Wai-chun
Hon Alan LEONG Kah-kit, SC

Hon LEUNG Kwok-hung
Hon Tanya CHAN
Hon WONG Yuk-man

Members absent : Hon Albert HO Chun-yan
Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Starry LEE Wai-king, JP
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Public Officers attending : Agenda item I

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

Mr Raymond WU Wai-man
Principal Assistant Secretary for Commerce &
Economic Development (Commerce & Industry)

Mr Michael LAM Siu-chung
Senior Assistant Law Draftsman
Department of Justice

Ms Phyllis POON Hon-ying
Senior Government Counsel
Department of Justice

Mr David Alan GROVER
Senior Government Counsel
Department of Justice

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

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Miss Lilian MOK
Council Secretary (1)7

Action

I Confirmation of minutes

(LC Paper No. CB(1)1701/10-11 -- Minutes of meeting held on
15 February 2011)

The minutes of the meeting held on 15 February 2011 were confirmed.

II Meeting with the Administration

Matters arising from last meeting

(LC Paper No. CB(1)1684/10-11(01) -- List of follow-up actions arising
from the discussion at the
meeting on 15 March 2011

LC Paper No. CB(1)1684/10-11(02) -- Administration's response to
CB(1)1684/10-11(01))

Institutional arrangement

(LC Paper No. CB(1)1523/10-11(03) -- Administration's paper on
institutional arrangement of the
Bill (Chinese version only)

LC Paper No. CB(1)320/10-11(02) -- Administration's information
paper on overview of major
components of the Competition
Bill (paragraphs 3 to 14 on
institutional arrangement)

LC Paper No. CB(1)1355/10-11(03) -- Summary of views expressed by
deputations on the institutional

arrangement of the Bill, and the Administration's response

LC Paper No. CB(1)1523/10-11(04) -- Supplementary summary of views expressed by deputations on the institutional arrangement of the Bill, and the Administration's response

LC Paper No. CB(1)320/10-11(03) -- Assistant Legal Adviser's letter dated 26 October 2010 to the Administration (clause 143, Part 11 and Schedule 6)

LC Paper No. CB(1)1034/10-11(05) -- Administration's response to CB(1)320/10-11(03))

Submissions received since last meeting

(LC Paper No. -- Submission from Federation of
CB(1)1684/10-11(03) Hong Kong Industries dated 8
March 2011 (English version
only)

LC Paper No. CB(1)1732/10-11(01) -- Submission from the Hong
Kong General Chamber of
Commerce dated 25 March
2011 (English version only))

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

3. The Bills Committee requested the Administration to provide written responses to the following concerns/requests –

(a) provide detailed response to the comments of the trade associations, including the Hong Kong General Chamber of Commerce (CB(1)1732/10-11(01)) on the adoption of the Canadian competition law model in Hong Kong;

(b) provide information on the Herfindahl-Hirschman Index (HHI) compiled by the Census and Statistics Department for selected

economic sectors in Hong Kong, and advise whether and if yes, how the proposed Competition Commission (the Commission) would make reference to HHI in calculating the market share of an undertaking;

- (c) in respect of the proposed section 7(2) of Schedule 5 to the Bill, advise whether the term of office of a person appointed to fill a vacancy might be longer than the term of the member whose office became vacant or longer than the remainder of the term of that member, and review the drafting of the proposed section accordingly;
- (d) provide examples of other statutory bodies which did not set any cap on the number of members and consider imposing an upper limit on the number of members of the Commission;
- (e) in relation to the proposed section 10 of Schedule 5 to the Bill concerning the appointment of a Chief Executive Officer (CEO) of the Commission, provide details of the remuneration currently paid to other comparable posts in similar statutory bodies in Hong Kong;
- (f) as regards the proposed section 12(3) of Schedule 5 to the Bill which stipulated that the Chairperson of the Commission must convene a meeting of the Commission on being given a notice for that purpose by two or more other members, consider revising the number of members to a fraction of the total number of members, for example, one-third of all members;
- (g) on the proposed section 13(2) of Schedule 5 to the Bill regarding the quorum for meetings of the Commission,
 - (i) consider whether it was appropriate to use "為斷定法定人數" as the Chinese rendition of "[f]or the purpose of determining the quorum"; and
 - (ii) consider amending the phrase of "other electronic means" ("其他電子方式") to "other electronic means of communication" ("其他電子通訊方式");
- (h) evaluate the use of telephone, video conferencing or other electronic means of communication by other statutory bodies in convening meetings, and consider limiting the number of

members of the Commission who could participate in the meeting by these means;

- (i) advise whether a member, who participated in a meeting of the Commission by telephone, video conferencing or other electronic means, would be regarded as being present for the purpose of the proposed section 15(1) of Schedule 5 to the Bill and whether that member would have a vote at that meeting as provided in that proposed section; and
- (j) in relation to the proposed section 18(d) of Schedule 5 to the Bill,
 - (i) explain the criteria for determining whether an irregularity in the procedures adopted by the Commission would affect the merit of the decision taken;
 - (ii) provide examples of irregularities in the procedures which would/ would not affect the merit of the decision taken; and
 - (iii) review the drafting of the proposed section, in particular the phrase "merit of the decision taken" and the Chinese rendition "所作决定的可取性".

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on 14 April 2011 from 2:30 pm to 6:30 pm. To expedite the progress of scrutiny of the Bill, some of the scheduled meetings would be extended to four hours. A revised meeting schedule would be issued to members separately.

III Any other business

5. There being no other business, the meeting ended at 6:30 pm.

**Proceedings of the eleventh meeting of
Bills Committee on Competition Bill
on Tuesday, 29 March 2011, at 4:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000637 – 000713	Chairman	(a) Opening remarks by the Chairman. (b) Confirmation of minutes of the meeting on 15 February 2011 (LC Paper No. CB(1)1504/10-11).	
000714 – 001457	Chairman Administration	<p>The Administration outlined its response to members' views and concerns raised at the meeting of the Bills Committee on 15 March 2011 (LC Paper No. CB(1)1684/10-11(02)).</p> <p>The Administration also took this opportunity to clarify that the Chinese rendition of the term "remuneration" in the Securities and Futures Ordinance (Cap. 571) and Telecommunications Ordinance (Cap. 106) was "報酬" and "酬金" respectively.</p>	
001458 – 002347	Chairman Mr Jeffrey LAM Administration	<p>In response to Mr Jeffrey LAM's enquiry about the Herfindahl-Hirschman Index (HHI), the Administration clarified that HHI was normally used as an indicator of the level of concentration in a sector but not a methodology to calculate the market share of an undertaking. As regards its application in other jurisdictions, the Administration advised that competition authorities in the United States often referred to HHI in evaluating the likely competitive effects of a merger.</p> <p>In response to Mr LAM's further query why Hong Kong did not adopt the Canadian competition law model, the Administration highlighted that the competition law in Canada, which adopted a criminal regime, had been introduced for quite a long period of time and hence, the business sector was already very familiar with the underlying principles of a competition law and the relevant legal requirements. Nevertheless, legislative amendments were introduced in 2009 to confine the imposition of criminal sanctions and heavier penalties on several specific categories of "hard core" anti-competitive conduct only. Taking into consideration the different situations between the two places, it might not be appropriate for Hong Kong to follow the Canadian model. The Administration was of the view that the competition law models of the European Union (EU) and the United Kingdom would suit Hong Kong better.</p> <p>Mr LAM considered it desirable to model on the practice of Singapore and impose a cap on the number of members of the future Competition Commission (the Commission) to enhance cost-control. The Administration explained</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>that some overseas jurisdictions had set a cap while some not. The present arrangement of not setting a cap would provide flexibility for appointment of members to the Commission when the circumstances so required and suitable persons with relevant experience and expertise were identified. In addition, it was expected that the cost of providing remuneration to members to be appointed to the Commission would not be very substantial since they would not work on a full-time basis.</p>	
002348 – 002457	Chairman Mr CHAN Kin-por Administration	<p>Concerning factors to be taken into account in assessing whether an agreement was having an appreciable effect in a market when the "de minimis" threshold had been exceeded (paragraph 5 of CB(1)1684/10-11(02)), Mr CHAN Kin-por enquired as to whether there would be any guidelines or concrete examples to facilitate consideration of the Commission and the Competition Tribunal (the Tribunal) in assessment of the agreements.</p> <p>Following the practices of the competition authorities in EU and Singapore, the Administration affirmed that guidelines listing the factors of consideration would be put in place for reference of the Commission and the Tribunal.</p>	
002458 – 002810	Chairman Mr Jeffrey LAM Administration	<p>Noting that the Administration had been making reference to various models in drafting the Bill, Mr Jeffrey LAM urged the Administration to appreciate the merits of the Canadian competition law model and consider modelling part of it for the Bill.</p> <p>The Administration recognized that every model had its own merits and reference value. While the Administration had mainly made reference to the practices of EU, UK and Singapore where a civil enforcement model was adopted to deal with anti-competitive conduct, members were welcomed to present their views on the Canadian model, in particular the relevant provisions from which reference should be drawn by the Government.</p> <p>With reference to the comments of some trade associations, including the Hong Kong General Chamber of Commerce (CB(1)1732/10-11(01)) on the adoption of the Canadian competition law model in Hong Kong, Mr LAM requested the Administration to provide detailed response to the comments.</p>	The Administration to provide information as requested in paragraph 3(a) of the minutes.
002811 – 003156	Chairman Administration	<p>The Chairman enquired about the application of the HHI compiled by the Census and Statistics Department (C&SD) in calculating the market share of an undertaking.</p> <p>The Administration responded that in assessing whether a particular conduct was anti-competitive, the Commission might make reference to HHI compiled by C&SD if it considered appropriate to do so and the index was</p>	The Administration to provide information as requested in paragraph 3(b) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>applicable to the market sector under investigation.</p> <p>Noting the above, the Chairman requested the Administration to provide information on HHI compiled by C&SD for selected economic sectors in Hong Kong, and to advise whether and if yes, how the Commission would make reference to HHI in calculating the market share of an undertaking.</p> <p>Referring to the remuneration for non-officials for the Telecommunications (Competition Provisions) Appeal Board, the Chairman asked whether the Administration would make reference to it in determining the level of remuneration for the Chairperson and members of the Commission.</p> <p>The Administration advised that the level of remuneration for the Chairperson and members of the Commission would be decided by the Chief Executive (CE) and considerations would be given to the nature, duties and workload of the Commission. The Administration pointed out that the nature of the Commission was different from that of the Appeal Board quoted by the Chairman, and they should be subject to different rates of remuneration.</p> <p>The Chairman commented that the Commission should have a much heavier workload and hence, the remuneration for the Chairperson and members of the Commission should be more substantial.</p>	
003157 – 003501	Chairman Mr Jeffrey LAM Administration	<p>Mr Jeffrey LAM did not subscribe to the Administration's arrangement that many important and sensitive issues would be left to the future Commission to consider and decide. He expressed concern that despite the repeated urge of the Bills Committee for certainty in the operation of the Commission, the Administration kept reiterating the importance of providing sufficient flexibility for the Commission to cater for variations over time. He urged the Administration to take into account the views and concerns of the Bills Committee and to define clearly the scope of work of the Commission at an earlier stage.</p> <p>In response, the Administration explained that key issues like the functions, composition and appointments of the Commission had already been set out in details in the Bill. The Commission would be underpinned by a Chief Executive Officer (CEO) who, with the assistance of other employed staff, would be responsible for managing the administrative affairs of the Commission which would make decisions and resolutions at relevant meetings.</p>	
003502 – 003629	Chairman Assistant Legal	The Chairman reminded the Administration to provide a list of the definition of "shadow director" used in other	

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	Adviser (ALA) Administration	<p>Hong Kong ordinances and explain the interpretation and the usage of "shadow director" in these ordinances (CB(1)1355/10-11(01)).</p> <p>Referring to the meeting of the Bills Committee on Companies Bill, the Chairman and ALA drew the Administration's attention that under the Companies Bill, the formulation of "officer in default" had been changed to "responsible person".</p>	
003630 – 003718	Chairman Administration	<p><u>Continuation of clause-by-clause examination</u></p> <p><u>Schedule 5 – Proposed section 6 – Vacancy in office of member</u></p> <p>Members did not raise any queries.</p>	
003719 – 004005	Chairman Administration ALA	<p><u>Schedule 5 – Proposed section 7 – Filling of vacancy</u></p> <p>ALA expressed concern whether the term of office of a person appointed to fill a vacancy might be longer than the term of the member whose office became vacant or longer than the remainder of the term of that member. The present drafting might be interpreted to mean that the term of office of the newly replaced member could be more than three years.</p> <p>Noting ALA's advice, the Administration clarified that the policy intention was that the term of office of the new member might go beyond the remaining term of the member whose office became vacant and they would consider specifying this in the Chinese rendition of this proposed section. It undertook to review the drafting of the proposed section accordingly.</p>	The Administration to provide information as requested in paragraph 3(c) of the minutes.
004006 – 004720	Chariman Ms Emily LAU Administration ALA	<p>In response to Ms Emily LAU's enquiry about setting out in the Bill an upper limit on the number of members to be appointed to the Commission, the Administration reiterated that it would be more flexible not to do so to allow persons with relevant experience and expertise to be appointed as members of the Commission should circumstances so require. If an upper limit was imposed on the number of members of the Commission, it might not be feasible to appoint suitable candidates to the Commission to cope with the increasing workload. The Administration understood that the same practice was adopted by a number of statutory bodies.</p> <p>In reply to the Chairman, ALA advised that there were different ways in setting out the number of members for statutory bodies, e.g. specifying the exact number of members, setting a lower limit or upper limit only, or setting both lower and upper limits.</p>	The Administration to provide information as requested in paragraph 3(d) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>Ms LAU was unconvinced of the Administration's explanation and enquired about the exercise of such flexibility. She expressed concern that CE might, at his discretion, appoint additional members to the Commission if the existing members did not share the same opinion with him. She asked the Administration about the intended number of members to be appointed to the Commission.</p> <p>The Administration responded that the appointment of members of the Commission would be made by CE who would also decide on the number of members to be appointed to the Commission. Nevertheless, members were welcomed to suggest the optimal number of members of the Commission that should be appointed.</p> <p>The Chairman requested the Administration to provide examples of other statutory bodies which did not set any cap on the number of members and to consider imposing an upper limit on the number of members of the Commission.</p>	
004721 – 004851	Chairman Mr Jeffrey LAM Administration	In reply to the concern of Mr Jeffrey LAM about the number of members of the Commission, the Administration advised that considering the wide range of statutory duties of the Commission as set out in the Bill, different committees with specified tasks like public education, drafting of guidelines and liaison with external bodies might be set up under the Commission to share the heavy workload.	
004852 – 005125	Chairman Mr CHAN Kin-por Administration	In reply to Mr CHAN Kin-por's enquiries, the Administration advised that the Commission would investigate into competition-related cases either on receipt of complaints, on its own initiatives, or on referral from the Government or a court. On the possible number of complaints to be dealt with by the Commission and cases to be brought before the Tribunal in the first year after the enactment of the competition law, the Administration said that in the first year, the Commission would focus on drafting regulatory guidelines in consultation with the public as well as setting out its own operational framework.	
005126 – 005821	Chairman Ms Audrey EU Administration	<p>In view that the Commission was to consist of not less than five members, Ms Audrey EU expressed concern that three of them would already form a quorum and make valid decisions. In this connection, the Chairman also requested the Administration to take note of possible conflict of interests of members of the Commission.</p> <p>Ms EU sought information on the difference between appointing a person to fill a vacancy and appointing a person as a new member. The Administration said that a vacancy would arise only when the office of one of the five</p>	

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		<p>members in the Commission became vacant. It would be more practical to allow the term of the newly replaced member to extend beyond the term of the member whose office became vacant, especially so when the remainder of the term of the previous member was very short, say a few days.</p> <p>Ms EU further asked whether cases handled by the previous members whose offices became vacant would have to be examined from scratch again after the newly replaced member came on board. The Administration advised that while there was merit for the same group of members to deal with a case throughout the examination period, the continuity would be maintained by the CEO and other full-time staff.</p>	
005822 – 005959	Chairman Mr Jeffrey LAM Administration	In response to the enquiries of Mr Jeffrey LAM about safeguards available to members of the Commission in the event that the Commission lost a court case, the Administration advised that clause 132 of the Bill provided personal immunities to members or employees of the Commission if they had discharged their duties in good faith.	
010000 – 010140	Ms Emily LAU Administration Chairman	Ms Emily LAU further enquired when the Bills Committee would be notified of information such as the number of members to be appointed to the Commission and the level of remuneration payable to them. The Administration reiterated that the number of members to be appointed to the Commission would be decided by CE after the passage of the Bill.	
010141 – 010613	Chairman Mr LEUNG Kwok-hung Administration	<p><u>Schedule 5 – Proposed section 7 – Filing of vacancy</u></p> <p>Discussion on the appointment mechanism and terms of appointment of the Commission. Mr LEUNG Kwok-hung expressed concern about the role of the Legislative Council in monitoring the decisions of CE on the matters. The Administration advised that while the proposed arrangement in the Bill had followed the established practice, it would consider members' views on capping the number of members in the Commission.</p>	
010614 – 010916	Chairman Ms Miriam LAU Administration	<p><u>Schedule 5 – Proposed section 7 – Filing of vacancy</u></p> <p>Ms Miriam LAU urged the Administration to follow the practice of Singapore which had set lower and upper limits on the number of members of its competition authority.</p> <p>In reply to Ms LAU's further enquiry, the Administration advised that –</p> <p>(a) while the Government's internal policy was to appoint the same member to serve in the same committee for a maximum of six years, the present drafting</p>	

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		<p>provided flexibility for appointing the same member to serve in the Commission for more than six years should circumstances so require, such as the member concerned was dealing with an important case; and</p> <p>(b) the Commission would be underpinned by an executive arm comprising about 50 staff led by a CEO.</p>	
010917 – 011145	Chairman Administration ALA	<p><u>Schedule 5 – Proposed section 8 – Chairperson</u> <u>Schedule 5 – Proposed section 9 – Acting chairperson</u></p> <p>Members did not raise any queries.</p>	
011146 – 011522	Chairman Ms Emily LAU Administration ALA	<p><u>Schedule 5 – Proposed section 10 – Chief Executive Officer</u></p> <p>In reply to Ms Emily LAU's enquiry, the Administration advised that the post of CEO would be recruited through global search and the remuneration would be pitched with reference to the prevailing market remuneration level with a view to attracting the most suitable candidate. At the request of Ms LAU, the Administration agreed to provide details of the remuneration currently paid to other comparable posts in similar statutory bodies in Hong Kong.</p>	The Administration to provide information as requested in paragraph 3(e) of the minutes.
011523 – 011553	Chairman Administration	<p><u>Schedule 5 – Proposed section 11 – Power to employ staff etc.</u></p> <p>Members did not raise any queries.</p>	
011554 – 011859	Chairman Administration	<p><u>Schedule 5 – Proposed section 12 – General procedure for meetings of Commission</u></p> <p>In response to the Chairman's concern, the Administration said that as members of the Commission, being experts in various sectors, would not request the Chairperson to convene a meeting of the Commission without cause, it was therefore proposed that the Chairperson had to convene a meeting of the Commission on being given a notice for that purpose by two or more other members.</p> <p>The Chairman requested the Administration to consider revising the number of members to a fraction of the total number of members, for example, one-third of all members.</p>	The Administration to provide information as requested in paragraph 3(f) of the minutes.
011900 – 012308	Chairman Administration Ms Emily LAU	<p><u>Schedule 5 – Proposed section 13 – Quorum for meetings of Commission</u></p> <p>Ms Emily LAU expressed concern that there should be a cap limiting the number of members who could participate in the meeting of the Commission by telephone, video</p>	The Administration to provide information as requested in paragraph 3(h) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>conferencing or other electronic means, in particular if the meeting would consider important issues and/or involve commercially sensitive/ confidential information.</p> <p>The Administration explained that the proposed section aimed at providing flexibility to enable those members who could not attend the meeting in person to take part through the means stated in proposed section 13(2).</p> <p>The Chairman shared the concern and requested the Administration to consider limiting the number of members of the Commission who could participate in the meeting through these means.</p>	
012309 – 013347	Chairman Mr WONG Yuk-man Administration ALA	<p><u>Schedule 5 – Proposed section 13 – Quorum for meetings of Commission</u></p> <p>Mr WONG Yuk-man expressed concern that it was more appropriate and clearer to use "為決定法定人數" instead of "為斷定法定人數" as the Chinese rendition of "[f]or the purpose of determining the quorum". The Administration outlined the drafting practice and pointed out that the Chinese rendition of "decision" and "determination" was "決定" and "斷定" respectively. Nevertheless, the Administration would review the Chinese rendition of the phrase.</p> <p>Addressing Mr WONG's concern that some electronic means such as MSN would not allow third parties participation, the Administration said that as long as the member using the electronic means and other members present at the meeting could hear each other, it had served the purpose of the proposed section. The Administration agreed to consider whether it was necessary to change the phrase of "other electronic means" ("其他電子方式") to "other electronic means of communication" ("其他電子通訊方式").</p>	The Administration to provide information as requested in paragraph 3(g) of the minutes.
013348 – 013903	Chairman Mr WONG Ting-kwong Administration	<p><u>Schedule 5 – Proposed section 13 – Quorum for meetings of Commission</u></p> <p>Mr WONG Ting-kwong expressed concern about the need to ensure confidentiality if the meeting was held by some members participating by electronic means. He said that as matters dealt with by the Commission involved important decisions and some multi-national corporations might intercept communication amongst members of the Commission, the equipment and facilities used for holding e-conferencing should be encrypted.</p> <p>The Chairman shared the view and considered that the Commission should put in place internal guidelines disallowing Commission members to participate in</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>meetings by telephone, video conferencing or other electronic means if the meeting involved important decisions.</p> <p>The Administration pointed out that Part 8 of the Bill was related to disclosure of information which required the Commission to establish and maintain safeguards to prevent the unauthorized disclosure of confidential information in its possession, and imposed a duty on "specified persons" not to unlawfully disclose confidential information. Clause 124 provided that a specified person who contravened the provision of preserving confidentiality committed an offence and was liable to a fine and imprisonment.</p>	
013904 – 014651	<p>Chairman Ms Emily LAU Administration Mr LEUNG Kwok-hung</p>	<p><u>Schedule 5 – Proposed section 14 – Presiding member at meetings of Commission</u></p> <p>Ms Emily LAU considered that the Chairperson should not be allowed to preside over the meetings of the Commission by electronic means. She requested the Administration to evaluate the use of telephone, video conferencing or other electronic means by other statutory bodies in convening meetings.</p> <p>The Administration advised that pursuant to proposed section 14, in the absence of the Chairperson, a meeting of the Commission was to be presided over by the acting chairperson. The Secretariat of the Commission would strive to ensure that most members of the Commission could attend the meetings in person. Noting the Administration's explanation, Ms LAU requested the Administration to review the proposed section 13(2) and state that only a limited number of members could participate in the meetings of the Commission by electronic means. The Chairman also considered it inappropriate if a majority of members was participating in a meeting by electronic means.</p> <p>Mr LEUNG Kwok-hung did not consider it appropriate for members of the Commission to participate in the meetings by electronic means because the decisions of the Commission would have a significant bearing on the undertakings and/or the economic sectors concerned. He suggested that the matter should be decided by the Chairperson of the Commission.</p>	<p>The Administration to provide information as requested in paragraph 3(h) of the minutes.</p>
014652 – 015056	<p>Chairman Administration Ms Emily LAU ALA</p>	<p><u>Schedule 5 – Proposed section 15 – Voting at meetings of Commission</u></p> <p>Discussion on whether a member, who participated in a meeting of the Commission by telephone, video conferencing or other electronic means, would be regarded as being present for the purpose of the proposed section</p>	<p>The Administration to provide information as requested in paragraph 3(i) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		15(1) of Schedule 5 to the Bill, and whether that member would have a vote at that meeting as provided in the proposed section 15(1) of Schedule 5.	
015057 – 015236	Chairman Administration	<p><u>Schedule 5 – Proposed section 16 – Minutes</u> <u>Schedule 5 – Proposed section 17 – Written resolutions</u></p> <p>Members did not raise any queries.</p>	
015237 – 015949	Chairman Administration ALA Mr Ronny TONG Mr Paul TSE	<p><u>Schedule 5 – Proposed section 18 – Decisions not invalidated by defects in appointment etc.</u></p> <p>In relation to the proposed section 18(d) of Schedule 5 to the Bill, ALA expressed concern about the criteria and the person for determining whether an irregularity in the procedures adopted by the Commission would affect the merit of the decision taken, and the meaning of "merit of the decision taken" ("所作决定的可取性") was unclear.</p> <p>Echoing the concern, Mr Ronny TONG cited a situation and asked whether a decision taken by the Commission would still be valid if it was subsequently noted that the number of members who had signed or assented to the resolution did not form a majority.</p> <p>Mr Paul TSE also shared the concern and requested the Administration to spell out the policy intent of the provision. He said that as irregularity in procedures might cause procedural unfairness, the decision to invoke the provision should not be determined by the Commission.</p> <p>The Administration explained that the purpose of the proposed section was to ensure that the decisions of the Commission would not be invalidated by any irregularity in the procedures that did not affect the merit of the decisions, and, if challenged, it was for the Commission to establish that the irregularity in the procedures did not affect the merit of the decisions. The scenario quoted by Mr TONG was beyond procedural and should not be regarded as an irregularity in the procedures that did not affect the merit of the decision taken.</p> <p>The Chairman requested the Administration to review the proposed section.</p>	The Administration to provide information as requested in paragraph 3(j) of the minutes.
015950 – 020041	Chairman	<p>Meeting arrangements</p> <p>Members agreed to the Chairman's suggestion to extend the meeting duration of some scheduled meetings to four hours.</p>	