

立法會
Legislative Council

LC Paper No. CB(1)2626/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/12/09

Bills Committee on Competition Bill

**Minutes of fourteenth meeting on
Thursday, 12 May 2011, at 2:30 pm
in the Conference Room A 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 Fred LI Wah-ming, SBS, JP
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, 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
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 WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP

Hon Mrs Regina IP LAU Suk-ye, GBS, JP
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 LEE Cheuk-yan
Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP

Public Officers attending : Agenda item II

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)2142/10-11 -- Minutes of meeting held on 29 March 2011)

The minutes of the meeting held on 29 March 2011 were confirmed.

II Meeting with the Administration

Matters arising from last meeting

(LC Paper No. CB(1)2127/10-11(01) -- List of follow-up actions arising from the discussion at the meeting on 28 April 2011

LC Paper No. CB(1)2127/10-11(02) -- Administration's response to CB(1)2127/10-11(01))

Institutional arrangement

(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)2018/10-11(03) -- Submission from Dr Andrew SIMPSON of the Hong Kong

Polytechnic University dated 27 April 2011 (English version only)

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) (paragraphs 15 and 16))

Submissions received since last meeting

(LC Paper No. CB(1)2127/10-11(03) -- Submission from the Association of Consulting Engineers of Hong Kong dated 3 May 2011 (English version only)

LC Paper No. CB(1)2127/10-11(04) -- Submission from Zurich Insurance Company Limited dated 4 May 2011 (English version only)

LC Paper No. CB(1)2127/10-11(05) -- Submission from PCCW Limited received on 9 May 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) advise whether members of the proposed Competition Tribunal (the Tribunal), in performing functions under the Bill, are regarded as members of a court or not;
- (b) given the Tribunal consists of the judges of the Court of First Instance and the Chief Executive is to appoint two of them to be the President and the Deputy President of the Tribunal, advise whether the President/the Deputy President of the Tribunal is performing a judicial function or an administrative/executive

function;

- (c) in view that the President and Deputy President of the Tribunal are to hold office for a term of at least three years and not more than five years, clarify whether their independence would be undermined;
- (d) compare the power, structure and functions of the Tribunal with tribunals under other legislation such as the one under the Securities and Futures Ordinance (Cap. 571);
- (e) provide response to the following views and concerns in the submission from The Law Society of Hong Kong (LC Paper No. CB(1)1219/10-11(02)):
 - (i) in relation to clause 143 of the Bill concerning the procedures of the Tribunal, advise what rights of audience would apply, for example with regard to the parties' legal representatives (including solicitors) and whether corporate parties would be allowed to act in person generally; and if not, under what circumstances would they be so allowed; and with or without leave;
 - (ii) in relation to clause 153 of the Bill concerning appeal to the Court of Appeal (CA), consider not imposing a leave requirement; or consider imposing the same leave requirement as that for an appeal from the Court of First Instance to CA, i.e., leave should normally be granted unless the grounds of appeal have "no realistic prospects of success", and not a higher requirement as currently provided, i.e. the appeal has "a reasonable prospect of success";
 - (iii) in respect of clause 161(2) of the Bill, consider replacing the word "may" with "shall" as all the matters set out in Schedule 6 to the Bill are considered necessary to be addressed in the Memorandum of Understanding to be signed by the proposed Competition Commission (the Commission), the Broadcasting Authority (BA) and the Telecommunications Authority (TA) (the MOU);
- (f) regarding the proposed concurrent jurisdiction relating to telecommunications and broadcasting –

- (i) compare the scope of the existing regulatory frameworks of BA and TA with that of the Bill;
- (ii) advise whether the BA and TA could issue guidelines under the Bill or there would only be one set of guidelines to be issued by the Commission;
- (iii) advise whether any competition matter/complaint case would be left unattended under the proposed concurrent jurisdiction;
- (iv) instead of concurrent jurisdiction, consider vesting the power of regulating competition matters with the Commission which could delegate to BA and TA the power of investigation, etc. to deal with competition cases/complaint cases relating to broadcasting and telecommunications;
- (v) with reference to clause 160 of the Bill, advise the way forward if the competition regulators having concurrent jurisdiction cannot reach a consensus on which competition regulator shall perform the functions in relation to a competition matter;
- (vi) address the concerns about the proposed concurrent jurisdiction in the submissions received, including those from PCCW (CB(1)1335/10-11(04) and CB(1)2120/10-11 (05)), Hong Kong General Chamber of Commerce (CB(1)1732/10-11(01)) and Dr Andrew Simpson (CB(1)2018/ 10-11(03));
- (vii) provide information on the existing number of professionals with competition knowledge and experience in handling competition matters relating to telecommunications and broadcasting for TA and BA;
- (viii) consider deleting clause 157 regarding the interpretation of "concurrent jurisdiction" and review the drafting of clause 160(2) of the Bill to incorporate the interpretation;
- (ix) amend the Chinese text of clause 159(1)(c) of the Bill;
- (x) consider submitting the draft MOU prepared by the TA, BA and the Commission for scrutiny by the Panel on

Economic Development; and

- (xi) consider making copies of the MOU available at the offices of the Commission during ordinary business hours and in other manners, and review the drafting of clause 161(4);
- (g) provide an implementation timetable of the Competition Ordinance (including preparatory tasks such as public consultation, drafting and publication of guidelines, public education, preparation and signing of MOU etc), and the proposed sequence of commencement of different parts of the Ordinance;
- (h) consider including in the Bill a provision for establishing and maintaining a register of interests such that members of the Commission and its committees would be required to register his or her interest as appropriate and relevant meeting documents of the Commission would not be passed to that member having a conflict of interest in the matter under consideration; and
- (i) conduct research on the review reports studying the impact of competition law enforcement prepared by overseas non-government organizations, community bodies or chambers of commerce with credibility, and provide information on the outcome of the study.

4. Ms Emily LAU requested the Clerk to relay the following suggestions to the Bills Committee on Communications Authority (CA) Bill for consideration –

- (a) to include in the CA Bill a provision for establishing and maintaining a register of interests such that members of CA and its committees would be required to register his or her interest as appropriate and relevant meeting documents would not be passed to that member having a conflict of interest in the matter under consideration; and
- (b) to consider including a provision similar to the proposed section 5(1)(-b) of Schedule 5 to the Bill which read, "[t]he Chief Executive may remove a member from office if the member fails to comply with a conflict of interest disclosure obligation set out in many rules made by the Commission under section 32 of this Schedule".

(Post-meeting note: The Clerk has relayed the above suggestions on 16 May 2011 to the Bills Committee on CA Bill for consideration.)

5. The Chairman reminded members that the next meeting of the Bills Committee would be held on 31 May 2011 from 2:30 pm to 6:30 pm.

III Any other business

6. There being no other business, the meeting ended at 6:00 pm.

Council Business Division 1
Legislative Council Secretariat
30 June 2011

**Proceedings of the fourteenth meeting of
Bills Committee on Competition Bill
on Thursday, 12 May 2011, at 2:30 pm
in the Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000459 – 000629	Chairman	Opening remarks by the Chairman. Confirmation of minutes of meeting on 29 March 2011 (CB(1)2142/10-11).	
000630 – 001232	Chairman Administration	The Administration outlined its response to members' views and concerns raised at the meeting of the Bills Committee on 28 April 2011 (CB(1)2127/10-11(02)).	
001233 – 001319	Chairman Administration	In response to the Chairman's enquiry regarding the composition of the Competition Tribunal of Canada, the Administration advised that based on the information available, the requirements of the eight lay members were not specified.	
001320 – 002000	Chairman Mr Jeffrey LAM Administration	Discussion on the impacts of competition law enforcement in other competition jurisdictions. Mr Jeffrey LAM and the Chairman requested the Administration to conduct research on the review reports studying the impact of competition law enforcement prepared by overseas non-government organizations, community bodies or chambers of commerce with credibility, and provide information on the outcome of the study.	The Administration to take action as requested in paragraph 3(i) of the minutes.
002001 – 002527	Chairman Assistant Legal Adviser (ALA) Dr Margaret NG Administration Mr Jeffrey LAM	Referring to the Administration's paper (CB(1)2127/10-11(02)), ALA suggested that members might consider the following issues – (a) whether, under the proposed section 28 of Schedule 5 to the Bill, the majority of members of the committees to be established under the proposed Competition Commission (the Commission) should be members of the Commission; and (b) whether the Bills Committee agreed to model on clause 13 of the Communication Authority Bill (CA Bill) and add similar provisions in respect of conflict of interest and disclosure of interest to Part 4 of Schedule 5 to the Bill. Dr Margaret NG suggested the Bills Committee to examine the proposed provisions together with other Committee Stage amendments (CSAs) to be proposed by the Administration and after the CA Bill was passed. Members agreed.	

Time marker	Speaker	Subject(s)	Action required
002528 – 003313	Chairman Administration Dr Margaret NG Mr Ronny TONG	<p><u>Continuation of clause-by-clause examination</u> (CB(1)1355/10-11(03) and CB(1)1523/10-11(04))</p> <p><u>Clause 153 – Appeal to Court of Appeal</u> <u>Clause 154 – Registrar and other staff of Tribunal</u> <u>Clause 155 – Seal of Tribunal</u> <u>Clause 156 – Tribunal rules</u></p> <p>Members did not raise any queries.</p>	
003314 – 003941	Chairman Dr Margaret NG Administration	<p>With reference to Part 10 of the Bill regarding the proposed Competition Tribunal (the Tribunal), Dr Margaret NG enquired –</p> <p>(a) whether a member of the Tribunal, in performing any of his functions under the Bill, would be regarded as a member of a court; and</p> <p>(b) whether the independence of the President and Deputy President of the Tribunal would be undermined if they were appointed by the Chief Executive to hold office for a term of at least three years and not more than five years.</p> <p>The Administration undertook to clarify the above issues and revert to the Bills Committee at a later stage. It pointed out that under clause 134 of the Bill, judges of the Court of First Instance (CFI) appointed under section 6 of the High Court Ordinance (Cap. 4) would be members of the Tribunal by virtue of their appointments as such judges. Hence, CFI judges, apart from undertaking their duties in CFI, would also serve as Tribunal members.</p>	The Administration to provide information as requested in paragraphs 3(a) and (c) of the minutes.
003942 – 004034	Chairman	The Chairman advised that two submissions (CB(1)2018/10-11(03) and CB(1)2127/10-11(05)) regarding the proposed concurrent jurisdiction relating to telecommunications and broadcasting under Part 11 of the Bill had been received.	
004035 – 004339	Chairman Dr Philip WONG Administration	In response to Dr Philip WONG's enquiries, the Administration advised that in line with the existing arrangement for judicial appointments, the President and Deputy President of the Tribunal would be appointed by the Chief Executive, acting in accordance with the recommendation of the Judicial Officers Recommendation Commission. Under clauses 143 and 156 of the Bill, the Chief Judge of the High Court might, after consulting the President of the Tribunal, make rules for the Tribunal, having regard to the policy objective of conducting proceedings in the Tribunal with as much informality as was consistent with attaining justice.	
004340 – 004414	Chairman Dr Margaret NG	The Administration undertook to clarify whether the President and the Deputy President of the Tribunal would	The Administration to provide

Time marker	Speaker	Subject(s)	Action required
	Administration	be performing a judicial function or an administrative/ executive function.	information as requested in paragraph 3(b) of the minutes.
004415 – 004623	Chairman Mr Albert HO Administration	Mr Albert HO requested the Administration to compare the power, structure and functions of the proposed Tribunal with tribunals established under other legislation such as the one under the Securities and Futures Ordinance (Cap. 571).	The Administration to provide information as requested in paragraph 3(d) of the minutes.
004624 – 004708	Chairman Dr Philip WONG	Dr Philip WONG expressed grave concern that it might not be affordable for Small and Medium Enterprises (SMEs) to engage legal professionals to handle competition litigations if the Tribunal was to conduct its proceeding like a formal court.	
004709 – 005926	Chairman Dr Margaret NG Administration	<p>Referring to the submission from The Law Society of Hong Kong (Law Soc) (CB(1)1219/10-11(02)), Dr Margaret NG requested the Administration to –</p> <p>(a) advise, in relation to clause 143 of the Bill concerning the procedures of the Tribunal, what rights of audience would apply, for example with regard to the parties' legal representatives (including solicitors) and whether corporate parties would be allowed to act in person generally; and if not, under what circumstances would they be so allowed; and with or without leave; and</p> <p>(b) consider, in relation to clause 153 of the Bill concerning appeal to the Court of Appeal (CA), not imposing a leave requirement; or consider imposing the same leave requirement as that for an appeal from CFI to CA, i.e., leave should normally be granted unless the grounds of appeal had "no realistic prospects of success", and not a higher requirement as currently provided, i.e., the appeal had "a reasonable prospect of success".</p> <p>The Administration advised that section 14AA of the High Court Ordinance (Cap. 4) also provided that leave to appeal required for interlocutory appeals should not be granted unless the appeal had "a reasonable prospect of success". According to the Judiciary, the present drafting was consistent with the direction of the current Civil Justice Reform.</p> <p>Dr Margaret NG expressed grave concern that the issue under consideration was a policy matter outside the jurisdiction of the Judiciary.</p>	The Administration to provide information as requested in paragraph 3(e)(i) and (ii) of the minutes.
005927 – 010337	Chairman Dr Philip WONG	Dr Philip WONG repeated his deep concern about the high litigation fees incurred by SMEs involved in competition	

Time marker	Speaker	Subject(s)	Action required
	Administration	<p>cases. He criticized that the Administration had failed to address the concerns of SMEs over the impact of the competition law on their business operations.</p> <p>The Administration said that due regard had been given to the SMEs when drafting the law. The Bill aimed to target anti-competitive conduct having appreciable adverse effect on competition and the proposed "de minimis" arrangement would set out the thresholds for agreements immune from the application of the first conduct rule. The exemption mechanism in the Bill would also help allay SMEs' concerns.</p>	
010333 – 010624	Chairman Administration	<p><u>Part 11 – Concurrent Jurisdiction relating to Telecommunications and Broadcasting Sectors</u></p> <p>The Administration briefed members on the proposed concurrent jurisdiction (paragraphs 13 to 14 of CB(1)320/10-11(02)).</p>	
010625 – 011402	Chairman Mr Jeffrey LAM Administration	<p>Supporting the opposing views of deputations including the Hong Kong General Chamber of Commerce on the proposed concurrent jurisdiction, Mr Jeffrey LAM queried whether people currently servicing the Broadcasting Authority (BA) and the Telecommunications Authority (TA) were well-versed in competition regulation, and if yes, they should be deployed to assist the work of the future Commission thereby obviating the need for concurrent jurisdiction which, in his view, would lead to inconsistency in investigation and enforcement decision.</p> <p>Mr LAM further enquired about whether BA and TA had been consulted on the proposal and whether there was adequate expertise within these two organizations to handle competition cases.</p> <p>The Administration said that BA and TA had agreed to the proposed concurrent jurisdiction upon consultation. Under the proposal, BA and TA would share concurrent jurisdiction with the Commission in respect of the investigation and the bringing of proceedings of competition cases in the broadcasting and telecommunications sectors, while cases in other sectors would be dealt with by the Commission. The existing adjudicative function of BA and TA would be transferred to the future Tribunal. This proposal had the merit of retaining the specialist knowledge of TA and BA in competition regulation. To ensure consistency and transparency in the exercise of the concurrent jurisdiction under which the same set of competition rules and regulatory guidelines would apply, BA, TA and the Commission would sign a Memorandum of Understanding (MOU) to co-ordinate the division of work and exchange of staff.</p>	

Time marker	Speaker	Subject(s)	Action required
011403 – 012331	Chairman Mr WONG Yuk-man Administration	<p>Mr WONG Yuk-man advised the administration to draw lesson from the concurrent jurisdiction arrangement for the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) in regulating structured financial products such as Lehman Brothers-related Minibonds. Noting that it was the Administration's intention for having one regulator for all competition matters in the longer run, Mr WONG enquired about the timeframe and arrangements.</p> <p>The Administration explained that the proposed concurrent jurisdiction mechanism aimed at retaining the specialist knowledge of TA and BA in competition regulation and to initially share the workload of the Commission. It was the policy intent for having one regulator for all competition matters in the long run, the exact timing of which would be subject to review on the actual implementation of the competition law. According to some overseas experience, concurrent jurisdiction arrangement might last over a decade or longer.</p> <p>The Chairman noted the earlier view of TA that the scope of the Bill was much wider when compared to the competition-related provisions under the Telecommunications Ordinance (Cap. 106) (TO) which only regulated competition matters within the sector. The Administration said that the Bill was broadly similar to the competition provisions under the TO subject to some modernization. Under the proposed concurrent jurisdiction regime, TA would only take up competition cases concerning the telecommunications sector while the Commission would deal with other cases which might straddle different sectors or involve bundling of products or services.</p>	The Administration to provide information as requested in paragraph 3(f)(i) and (vi) of the minutes.
012332 – 012629	Chairman Dr Philip WONG Administration	<p>Dr Philip WONG opined that the responsibilities and powers of the Commission, BA and TA should be clearly delineated under the proposed concurrent jurisdiction mechanism, otherwise, there might be competition cases left unattended. He considered that it was in the best interest of Hong Kong if the Bill could be withdrawn.</p> <p>The Administration advised that to ensure co-ordination and clarity in the exercise of the concurrent jurisdiction, the Bill provided that the Commission, BA and TA shall enter into a MOU, which might cover those matters specified in Schedule 6 to the Bill. To avoid double jeopardy, the Bill also provided that where one competition regulator was performing its function in relation to a competition matter, no other competition regulator might perform any function in relation to that matter.</p>	The Administration to provide information as requested in paragraph 3(f)(iii) of the minutes.
012630 – 013313	Chairman ALA	ALA suggested that members might consider the following issues –	The Administration to provide

Time marker	Speaker	Subject(s)	Action required
	Administration	<p>(a) as Schedule 6 only set out generally the matters that might be provided for in the MOU, it was not clear how, in practice, the performance of the functions of the Commission, TA and BA would be co-ordinated under clause 161 of the Bill;</p> <p>(b) whether BA and TA would have the same authority to issue guidelines if they enjoyed concurrent jurisdiction with the Commission; and</p> <p>(c) whether the same appeal mechanism would apply to all decisions made by the Commission, BA and TA.</p> <p>The Administration said that under the proposed concurrent jurisdiction arrangement –</p> <p>(a) the competition regulators would agree on the allocation of responsibilities for competition matters and draft the MOU upon the passage of the Bill;</p> <p>(b) the parties to the MOU would have joint authorship of the regulatory guidelines which would be applied consistently by all regulators; and</p> <p>(c) the adjudication and appeal of all cases investigated or determined by the Commission, TA and BA would be handled by the Tribunal. Decisions of the Tribunal would also be appealable before the Court of Appeal.</p> <p>The Administration considered that with the above, the concern over inconsistent application of the law should not arise.</p> <p>ALA drew members' further attention that –</p> <p>(a) the content of MOU would not be known before the passage of the Bill; and</p> <p>(b) if it was the policy intent that there would only be one set of guidelines, this should be specified in the Bill.</p>	information as requested in paragraph 3(f)(ii) of the minutes.
013314 – 013626	Chairman Mr Jeffrey LAM Administration	Mr Jeffrey LAM expressed grave concern about possible conflicts arising from the proposed concurrent jurisdiction regime, in particular in respect of the issuance of guidelines and appeal mechanism. Mr LAM further requested the Administration to provide information on the existing number of professionals with competition knowledge and experience in handling competition matters relating to telecommunications and broadcasting for TA and BA.	The Administration to provide information as requested in paragraph 3(f)(vii) of the minutes.
013627 – 014335	Chairman Dr Margaret NG Administration	In response to Dr Margaret NG's enquiry on the up and running implementation of the Bill, the Administration said that the Bill, if enacted, would be implemented in phases.	The Administration to provide information as

Time marker	Speaker	Subject(s)	Action required
		<p>The first phase would commence soon after the enactment of the Bill, covering the establishment of the Commission and the Tribunal, the preparation of MOU, and the drafting of guidelines by the Commission. It was estimated that the first phase would take at least a year to complete. The Administration agreed to provide an implementation timetable of the Competition Ordinance (including preparatory tasks such as public consultation, drafting and publication of guidelines, public education, preparation and signing of MOU, etc.), and the proposed sequence of commencement of different parts of the Ordinance.</p>	<p>requested in paragraph 3(g) of the minutes.</p>
014336 – 014548	Chairman Dr Philip WONG	Discussion on the work plan and meeting arrangements of the Bills Committee.	
014549 – 020853		Break	
020854 – 021711	Chairman Ms Emily LAU Administration ALA	<p>At the request of Ms Emily LAU, the Administration undertook to consider including in the Bill a provision for establishing and maintaining a register of interests such that members of the Commission and its committees would be required to register his or her interest as appropriate and relevant meeting documents of the Commission would not be passed to that member having a conflict of interest in the matter under consideration.</p> <p>Ms LAU also asked the Clerk to relay to the Bills Committee on Communications Authority (CA) Bill the aforesaid request and the suggestion of including in the CA Bill a provision similar to the proposed section 5(1)(b) of Schedule 5 to the Bill which read, "The Chief Executive may remove a member from office if the member fails to comply with a conflict of interest disclosure obligation set out in any rules made by the Commission under section 32 of the Schedule".</p>	<p>The Administration to consider and respond as requested in paragraph 3(h) of the minutes.</p> <p>The Clerk to take action as requested in paragraph 4 of the minutes.</p>
021712 – 022132	Chairman Administration ALA Ms Emily LAU	<p><u>Continuation of clause-by-clause examination</u></p> <p><u>Clause 157 – Interpretation</u></p> <p>Noting the observations of ALA, the Administration agreed to consider deleting clause 157 regarding the interpretation of "concurrent jurisdiction" and review the drafting of clause 160(2) of the Bill to incorporate the interpretation</p>	<p>The Administration to take action as requested in paragraph 3(f)(viii) of the minutes.</p>
022133 – 022858	Chairman Administration Ms Emily LAU Mrs Regina IP	<p><u>Clause 158 – Concurrent jurisdiction with Telecommunications Authority</u></p> <p>Discussion on the staffing arrangements and readiness of BA and the the Office of the Telecommunications Authority (OFTA), the executive arm of TA, in preparation for the implementation of the proposed concurrent jurisdiction regime under the Bill.</p>	<p>The Administration to provide information as requested in paragraph 3(f)(vi) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		Mrs Regina IP requested the Administration to address the concerns about the proposed concurrent jurisdiction raised in the submissions received.	
022859 – 023153	Chairman Miss Tanya CHAN Administration	Discussion on the drafting of clause 160(2) in response to the observations of ALA and Law Soc about clause 157.	
023154 – 023345	Chairman Administration	<u>Clause 159 – Concurrent jurisdiction with Broadcasting Authority</u> The Administration undertook to introduce CSAs to amend the Chinese text of clause 159(1)(c) of the Bill.	The Administration to take action as requested in paragraph 3(f)(ix) of the minutes.
023346 – 025231	Chairman Administration ALA Mrs Regina IP Mr LEUNG Kwok-hung	<u>Clause 160 – Transfer of competition matter between competition regulators</u> In response to the concern raised by ALA about the way forward if the competition regulators having concurrent jurisdiction could not reach a consensus on which competition regulator should perform the functions in relation to a competition matter, the Administration advised that under the Bill, the three competition regulators must prepare and sign a MOU which would provide for the allocation of responsibility amongst themselves and the manner in which the parties would resolve any dispute. ALA pointed out that the MOU would be prepared and signed after the passage of the Bill and the division of work and allocation of responsibility amongst the competition regulators would not be known at this stage. Mrs Regina IP expressed concern about regulatory arbitrage under the proposed concurrent jurisdiction regime. Mr LEUNG Kwok-hung was not confident about the proposed concurrent jurisdiction, having regard to the poor implementation of the same by HKMA and SFC. The Administration assured members that given a common set of competition rules and regulatory guidelines, and given that competition cases would be adjudicated by the Tribunal, the concern over inconsistent application of the law should not arise.	The Administration to provide information as requested in paragraph 3(f)(v) of the minutes.
025232 – 025532	Chairman Mr Jeffrey LAM Administration	Mr Jeffrey LAM considered it more desirable for the Commission to regulate all competition matters. The Administration advised that a review on the concurrent jurisdiction would be conducted after the competition rules had been implemented for some time.	
025533 – 030216	Chairman Mr Ronny TONG Administration	Mr Ronny TONG pointed out that competition law had been implemented in many places. He saw merits in the proposed concurrent jurisdiction arrangement in the initial	

Time marker	Speaker	Subject(s)	Action required
	Ms Emily LAU	<p>stage of implementation of the Bill but in the longer run, he considered that all competition matters should be handled by one regulator.</p> <p>The Administration said that it did not preclude the possibility of having one regulator for all competition cases in the long run. Review on the operation of the concurrent jurisdiction regime would be conducted in due course.</p> <p>Mr TONG invited Bills Committee members to attend an international conference on the subject to be held the following day, and advised that the gist of discussion would be published afterwards. Ms Emily LAU advised that the Democratic Party was in support of the Bill and hoped that the Administration could draw reference from international experience and improve the Bill.</p>	
030217 – 030644	Chairman Mr LEUNG Kwok-hung Administration	Mr LEUNG Kwok-hung repeated his deep concern about the division of responsibility among the competition regulators under the proposed concurrent jurisdiction. To allay members' worries, the Chairman requested the Administration to advise whether there would be any competition cases left unattended under the proposed concurrent jurisdiction mechanism.	The Administration to provide information as requested in paragraph 3(f)(iii) of the minutes.
030645 – 031119	Chairman Administration Miss Tanya CHAN	<p><u>Clause 161 – Memorandum of Understanding</u></p> <p>In response to Chairman's enquiry, the Administration advised that while the competition regulators might seek views from relevant stakeholders on the content of the MOU, public consultation would not be necessary as the MOU concerned primarily administrative arrangements among the competition regulators.</p> <p>In respect of clause 161(2) of the Bill, Miss Tanya CHAN requested the Administration to consider the suggestion of Law Soc to replace the word "may" with "shall" as all the matters set out in Schedule 6 to the Bill were considered necessary to be addressed in the MOU.</p>	The Administration to provide information as requested in paragraph 3(e)(iii) of the minutes.
031120 – 032207	Chairman Ms Audrey EU Administration ALA	<p>Instead of concurrent jurisdiction, Ms Audrey EU asked the Administration to consider vesting the power of regulating competition matters with the Commission which could delegate to BA and TA the power of investigation etc. to deal with competition cases/complaint cases relating to broadcasting and telecommunications.</p> <p>Ms EU considered that the manner of publication of the MOU should be clearly spelt out in clause 161(4). ALA advised that with references to other Ordinances in Hong Kong, there were different manners of publication of documents e.g. publishing in the Gazette/on the internet, making copies of documents available in the offices of the</p>	The Administration to provide information as requested in paragraphs 3(f)(iv) and (xi) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>parties concerned during office hours, or in any manner considered appropriate. Referring to clause 35 of the Bill, the Chairman requested the Administration to consider making copies of the MOU available at the offices of the Commission during ordinary business hours and in other manners, and review the present drafting of clause 161(4).</p> <p>Discussion on consultation on the MOU.</p>	
032208 – 032300	Chairman Mr LEUNG Kwok-hung Administration	The Chairman requested the Administration to consider submitting the draft MOU prepared by the TA, BA and the Commission for scrutiny by the Panel on Economic Development.	The Administration to provide information as requested in paragraph 3(f)(x) of the minutes.
032301 – 032537	Chairman Administration Mr Jeffrey LAM	<p><u>Schedule 6 – Matters that may be provided for in Memorandum of Understanding</u></p> <p>Members did not raise any queries.</p>	
032538 – 032714	Chairman Administration	Meeting arrangements	