

立法會
Legislative Council

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Bills Committee on Competition Bill

**Minutes of nineteenth meeting on
Wednesday, 20 July 2011, at 8:30 am
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
Hon Fred LI Wah-ming, SBS, JP
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, 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, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Hon CHAN Hak-kan
Hon CHAN Kin-por, JP
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon Paul TSE Wai-chun, JP
Dr Hon Samson TAM Wai-ho, JP
Hon LEUNG Kwok-hung
Hon Tanya CHAN

Members absent : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon CHIM Pui-chung
Hon Paul CHAN Mo-po, MH, JP
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man

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)

Attendance by invitation : Agenda item I

Session 1

Federation of Hong Kong Industries

Mr Jimmy KWOK
Deputy Chairman

Institution of Dining Art

Mr Simon WONG
Chairman

Hong Kong & Kowloon Plastic Products Merchants United Association Limited

Mr Raymond CHAN
Vice Chairman

The Hong Kong Electronic Industries Association

Prof K B CHAN
Chairman

Hong Kong Far Infrared Rays Association

Dr Edward CHAN Kwok-man
Chairman

Economic Synergy

Mr Elves LEUNG
Member

Hong Kong Brands Protection Alliance Ltd.

Mr Benny KONG
Legal Advisor

Hong Kong Small and Medium Enterprises Association

Mr Stephen KWOK
President

Federation of International SME

Mr Gary LO
President

Hong Kong Retail Management Association

Mr Charlie WOOD
Representative

The Hong Kong General Chamber of Small & Medium Business

Mr David TING
President

The Chinese General Chamber of Commerce

Mr Vincent FAN
Standing Committee Member

Hong Kong Business Community Joint Conference

Mr Aaron SHUM
Secretary – General

Hong Kong Jewelry Manufacturers Association

Mr Wings CHEUNG
General Manager

Hong Kong Auto Parts Industry Association

Mr CHAN Yan-ting
Founding Chairman

Alliance for Competition Law

Mr Michael MO
Member

Individual

Mr Hans MAHNCKE
Senior Co-ordinator (Projects)
City University of Hong Kong

Global Sources

Mr Spenser AU
Deputy CEO

Community Development Initiative

Mr Manu SRIVASTAVA

The Lion Rock Institute

Mr Dan RYAN
Director

Taxi & P.L.B. Concern Group

Mr LAI Ming-hung
Chairman

Session 2

Individual

Mr Andrew SHUEN
Financial Analyst

Individual

Mr Peter WONG
Columnist

SME Committee of Liberal Party

Mr Felix CHUNG
Convenor

Individual

Dr Robert HANSON
English Phonics Limited

Hong Kong Metal Merchants Association

Mr LAI Hin-fai
Chairman

The Hong Kong Metals Manufacturers Association

Mr Michael YU Lee-ming
Honorable Chairman

Civic Party

Mr Justin CHIN
District Developer

The Law Society of Hong Kong

Mr David COX
Member of the Competition Law Committee

Jan Cheong Sing Hardware

Mr CHING Yue-kwok
Manager

港粵中小企聯合會

Mr SHI Kai-biu
Chairman

Grandford International Promotions Limited

Ms Angelina CHAN
Director

Hong Kong General Chamber of Commerce

Mr Stephen CROSSWELL
Chamber Member

Hong Kong Construction Association

Ms Alice TO
Legal Director of Pinsent Masons

Investors Protection Association

Mr LUI Chi-wah
Chairman

Hong Kong Watch Manufacturers Association Ltd.

Mr Kenneth WONG
Vice President

A.M. International Manufacturing Company Ltd.

Mr Pedro CHAN
Director

Treasure Glory Asia Limited

Mr WONG Wai-shiu
Finance & Admin Manager

Treasure Will Limited

Ms Cherise MOK
Assistant Marketing Director

Consumer Council

Mr Ambrose HO
Vice-Chairman

Ms Rosa WONG
Head, Research & Trade Practices Division

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

Ms Michelle NIEN
Legislative Assistant (1)6

Action

I Meeting with deputations and the Administration

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

2. At the invitation of the Chairman, deputations presented their views on the Guidelines on the First Conduct Rule, the Second Conduct Rule and Market Definition. In response to members' request, the Consumer Council agreed to provide further submission on the three Guidelines. The Bills Committee requested the Administration to provide a detailed response to the

views and concerns expressed at the meeting and in the submissions.

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on 26 July 2011 from 2:30 pm to 5:30 pm.

II Any other business

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

Council Business Division 1
Legislative Council Secretariat
26 October 2011

**Proceedings of the nineteenth meeting of
Bills Committee on Competition Bill
on Wednesday, 20 July 2011, at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
001205 – 001319	Chairman	Opening remarks	
<i>Session 1</i>			
001320 – 001656	Federation of Hong Kong Industries (FHKI)	<p>FHKI expressed the following views –</p> <p>(a) the Administration should give due consideration to the local context instead of relying solely on overseas reference;</p> <p>(b) the Guidelines on the First Conduct Rule, the Second Conduct Rule and Market Definition (the Guidelines) provided by the Administration were too academic and a clear market definition as well as the legal liability of undertakings should be provided to protect the Small and Medium Enterprises (SMEs) from falling foul of the new law;</p> <p>(c) given Hong Kong's relatively small size where buyers could easily switch to other sellers in neighbouring areas, the entire Hong Kong should be regarded as a geographic market;</p> <p>(d) FHKI proposed to implement the Bill in phases and provide a longer transitional period to allow more time for the public to adapt to the new legislative requirements. At the initial stage of implementation, the Competition Tribunal (the Tribunal) should issue "orders" to correct anti-competitive conduct to facilitate undertakings' compliance with the new legislation.</p>	
001657 – 002045	Institution of Dining Art (IDA)	Presentation of views (CB(1)2790/10-11(01))	
002046 – 002353	Hong Kong & Kowloon Plastic Products Merchants United Association Limited (PPMUA)	PPMUA expressed grave concern about the potentially high legal costs to be incurred by SMEs for compliance with the Bill. It was roughly estimated that about 25% to 30% of companies in the plastics industry would close down by end of 2011 due to operating difficulties. PPMUA urged the Administration to withdraw the Bill.	
002354 – 002711	The Hong Kong Electronic Industries Association (HKEIA)	HKEIA remarked that the Bill did not only undermine the synergy in innovation and technology, it was also not in line with the principle of small government big market. Expressing objection to the Bill whilst upholding the spirit of anti-monopoly law, HKEIA urged the Administration to withdraw the Bill.	

Time marker	Speaker	Subject(s)	Action required
002712 – 003134	Hong Kong Far Infrared Rays Association (FIRA)	<p>FIRA urged the Administration to withdraw the Bill. It commented that public education to facilitate the community to understand the objectives and key elements of the Bill was very inadequate.</p> <p>With reference to the examples of conduct or practices listed in the Guidelines that might breach the first conduct rule, FIRA expressed concern that SMEs instead of large consortia would be the target of enforcement. It suggested the Administration to establish the Competition Commission (the Commission) as early as possible and invite representatives from SMEs to assist in the drafting of the future guidelines.</p>	
003135 – 003443	Economic Synergy	Presentation of views (CB(1)2730/10-11(18))	
003444 – 003844	Hong Kong Brands Protection Alliance Ltd (HKBPA)	<p>While upholding the spirit of anti-monopoly law like those enacted in the Mainland and Japan, HKBPA urged the Administration to withdraw the Bill and expressed the following concerns –</p> <ul style="list-style-type: none"> (a) the Bill was not clear enough; (b) the over concentration of too much power in the Commission; and (c) the remedies to be applied by the Tribunal were too stringent. <p>As competition expertise was limited in Hong Kong, HKBPA proposed to implement a sector-specific competition law.</p>	
003845 – 004301	Hong Kong Small and Medium Enterprises Association (SMEA)	Presentation of views (CB(1)2790/10-11(02))	
004302 – 004409	Federation of International SME (FISME)	<p>FISME expressed the following concerns –</p> <ul style="list-style-type: none"> (a) practices of price-fixing and bid-rigging would likely constitute a breach of the first conduct rule in future; (b) the Guidelines were not drafted clearly to protect SMEs from falling foul of the new law; (c) large consortia might abuse the stand-alone private rights of action provided under the Bill to harass SMEs; and (d) there should be consensus on the amount of the maximum pecuniary penalties which was proposed to be not exceeding 10% of the turnover of the 	

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		undertaking infringing any of the competition rules.	
004410 – 004637	Hong Kong Retail Management Association (HKRMA)	Presentation of views (CB(1)2790/10-11(05)). HKRMA considered it not appropriate to let the Commission decide whether or not vertical agreements should be dealt with under the first conduct rule.	
004638 – 004953	The Hong Kong General Chamber of Small & Medium Business	Presentation of views (CB(1)2790/10-11(03))	
004954 – 005408	The Chinese General Chamber of Commerce	Presentation of views (CB(1)2790/10-11(04))	
005409 – 005728	Hong Kong Business Community Joint Conference (BCJC)	BCJC expressed objection to the Bill which would undermine the business environment of Hong Kong. It expressed grave concern about the lack of clarity of the Bill and the composition of the Commission.	
005729 – 010035	Hong Kong Jewelry Manufacturers Association (HKJMA)	HKJMA urged the Administration to withdraw the Bill and commented that both the Bill and the Guidelines were unclear and ambiguous. As the Commission would need to take time to consider whether or not certain behaviour of undertakings would be excluded from the application of the first conduct rule, undertakings awaiting the Commission's decision might not be able to seize business opportunities timely.	
010036 – 010333	Hong Kong Auto Parts Industry Association (HKAPIA)	<p>HKAPIA urged the Administration to withdraw the Bill for the following reasons –</p> <ul style="list-style-type: none"> (a) the Bill would violate the free market principle and cause disturbance to business operation; (b) the Bill and the Guidelines were complex and unclear thereby increasing compliance burden and legal costs of SMEs; and (c) SMEs instead of large consortia would become the target of enforcement. 	
010334 – 010640	Alliance for Competition Law (ACL)	ACL supported the Bill for a perfect competition environment. It was of the view that the implementation of the Bill would benefit both SMEs and consumers, and hence urged the Bills Committee to lend support to the early enactment of the Bill.	
010641 – 011031	Prof Hans MAHNCKE	Prof Hans MAHNCKE was of the view that the competitive distortions in Hong Kong were due to property cartels and hence, the solution to competition problems was not the enactment of the Bill but a reform of the land policy in Hong Kong. He further expressed concern about the	

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		content of the future guidelines which would only be drawn up by the Commission upon consultation after the passage of the Bill as well as the composition of the Commission comprising members appointed by the Chief Executive.	
011032 – 011407	Global Sources	Presentation of views (CB(1)2730/10-11(04))	
011408 – 011555	Community Development Initiative	Presentation of views (CB(1)2730/10-11(05) and CB(1)2749/10-11(01))	
011556 – 012040	The Lion Rock Institute (LRI)	LRI criticized that the Guidelines were not clear enough to indicate the manner in which the Commission would interpret the first and second conduct rules in different industries and to define a relevant market for the purpose of competition analysis. Given the ambiguity of the Bill and that SMEs might undertake anti-competitive conduct unknowingly, LRI urged the Administration to withdraw the Bill.	
012041 – 012322	Taxi & P.L.B. Concern Group (the Concern Group)	Referring to the unfair competition between taxis/public light buses and franchised buses, the Concern Group supported the enactment of the Bill with an aim to bring benefits to both the industry and consumers.	
012323 – 012502	Chairman Administration	<p><u>Preliminary response by the Administration</u></p> <p>The Administration noted the views of the deputations and would respond to the suggestions and major concerns expressed by different sectors of the community in the fourth quarter of 2011.</p>	
012503 – 012917	Chairman Mr Ronny TONG Administration	<p>Noting SMEs' urge for an anti-monopoly law, Mr Ronny TONG was disappointed to note the Administration's failing effort in explaining to the business sector the Bill was in fact very similar to an anti-monopoly legislation in prohibiting anti-competitive conduct.</p> <p>The Administration explained that it had reached out to the community in the past few months to brief them on the key elements of the Bill, including the coverage and objective of the proposed second conduct rule which had also been presented in previous consultation documents. The Administration would continue to step up publicity efforts to enhance public understanding of the Bill.</p>	
012918 – 013257	Chairman Mr Fred LI	Mr Fred LI remarked that with reference to other jurisdictions, an anti-monopoly law and a competition law were very similar in promoting competition for the benefit of consumers and providing a level-playing field for businesses to compete. While taking note of the difficulties encountered by SMEs in business operations due to high land prices, he expressed concern that	

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		<p>undertakings, irrespective of scale, should not engage in hard-core anti-competitive conducts. Mr LI said that the Democratic Party had pledged for the enactment of a competition law in Hong Kong for more than a decade, there was no question of secret deals between the Government and the democratic camp.</p>	
013258 – 013607	Chairman Mr Jeffrey LAM	<p>Mr Jeffrey LAM welcomed the views of deputations and urged the Administration to give due consideration to their views and concerns. Promotion and public education on the Bill should also be stepped up in future.</p>	
013608 - 013959	Chairman Ms Emily LAU	<p>Echoing the view of Mr Fred LI, Ms Emily LAU noted the different views expressed by the business sector. Ms LAU further urged the Administration to strike a balance between the interests of consumers and the business community as well as to provide a detailed response to the views and concerns expressed in the meeting.</p>	
014000 – 014340	Chairman Mr Albert HO	<p>Mr Albert HO thanked deputations' views. He highlighted the importance of the Guidelines and opined that there should be extensive consultation to ensure understanding of the new legislation and the Guidelines by the business sector.</p>	
014341 – 014909	Chairman Ms Audrey EU FHKI	<p>Ms Audrey EU thanked deputations' views and referred to the proposal of FHKI to adopt a market share threshold of 60% under the "de minimis" approach. With reference to the competition law model in the United Kingdom (the UK), FHKI pointed out that the turnover of business and market share of an undertaking would both be considered in deciding whether the undertaking would be excluded or exempted from the law.</p>	
014910 – 015529	Chairman HKBPA FIRA BCJC PPMUA IDA	<p>HKBPA reiterated that it hoped the Administration to withdraw the Bill.</p> <p>FIRA expressed again its objection to the Bill.</p> <p>BCJC upheld the spirit of anti-monopoly legislation and opined that large consortia engaging in anti-competitive practices, such as manipulating oil prices, controlling supplies in supermarkets etc, should be the target of enforcement.</p> <p>By citing an example of the United States, PPMUA expressed objection to the Bill.</p> <p>IDA expressed concern about the clarity of the Bill and the worries of other SMEs about breaching the proposed conduct rules unknowingly.</p>	
015530 – 015923	Chairman Mr Paul TSE	<p>Mr Paul TSE thanked deputations' views and encouraged SMEs to give more comments on the Bill so that there</p>	

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		would be different voices in the community for consideration of the Government in taking forward the Bill as well as other policies.	
015924 – 020804		Break	
Session 2			
020805 – 021154	Mr Andrew SHUEN	Mr Andrew SHUEN pointed out that the competition law models of some jurisdictions proved to be not effective in combating anti-competitive conduct and hence, the Government should not just copy the models and put forth the implementation of the Bill.	
021155 – 021520	Mr Peter WONG	Referring to the articles published in different local newspapers and views aired in electronic media, Mr Peter WONG pointed out that SMEs would likely be the target of enforcement under the Bill.	
021521 – 021849	SME Committee of Liberal Party (LP)	Noting that the Bill would greatly affect the business environment of Hong Kong, SME Committee of LP criticized that many specific terms in the Guidelines like "anti-competitive conduct" and "market" were not clearly defined thereby creating possible loopholes for abuse in future. It pointed out that many SMEs looked forward to an anti-monopoly law under which large consortia abusing their market power would be held liable. It urged the Administration to attach importance to public opinion and take into account the worries expressed by SMEs.	
021850 – 022203	Mr Robert HANSON	Mr Robert HANSON drew members' attention to the cost of enacting the Bill, including the high legal costs to be incurred by SMEs for compliance with the competition rules and the actual cost of supporting the Commission by taxpayers. He commented that law-practising members of the Bills Committee were having conflict of interest as the legislation would make the legal profession a lucrative business. He solicited SMEs' support to withdraw the Bill.	
022204 – 022454	Hong Kong Metal Merchants Association	Presentation of views (CB(1)2730/10-11(03))	
022455 – 022827	The Hong Kong Metals Manufacturers Association (HKMMA)	Presentation of views (CB(1)2790/10-11(06))	
022828 – 023102	Civic Party	Presentation of views (CB(1)2796/10-11(04))	
023103 –	The Law Society of	Presentation of views (CB(1)2730/10-11(06))	

Time marker	Speaker	Subject(s)	Action required
023505	Hong Kong (Law Soc)		
023506 – 023825	Jan Cheong Sing Hardware	Presentation of views (CB(1)2730/10-11(19))	
023826 – 024004	港粵中小企聯合會	Presentation of views (CB(1)2790/10-11(07))	
024005 – 024129	Grandford International Promotions Limited (GIPL)	GIPL criticized that SMEs were worried about the Guidelines which were very unclear. Given the grave concerns of SMEs which made up 98% of local undertakings, it was expected that the Bill would not be implemented smoothly and effectively to address different competition concerns. In this light, GIPL urged the Administration to consider withdrawing the Bill.	
024130 – 024502	Hong Kong General Chamber of Commerce (HKGCC)	Presentation of views (CB(1)2730/10-11(07) and CB(1)2790/10-11(07))	
024503 – 024650	Hong Kong Construction Association	Presentation of views (CB(1)2730/10-11(20))	
024651 – 024922	Investors Protection Association (IPA)	While most of the SMEs looked forward to a competitive business environment, IPA remarked that the Bill would not provide a level-playing field for SMEs to compete as they would be the target of enforcement. Since over 98% of undertakings in Hong Kong were SMEs, IPA said that the Government should attach importance to their concerns and worries. To protect the interests of SMEs, IPA urged the Administration to withdraw the Bill and put forth an anti-monopoly legislation.	
024923 – 025230	Hong Kong Watch Manufacturers Association (HKWMA)	Being a trade association, HKWMA served as a platform for its members to exchange updates relating to overseas markets including information on products, buyers, price and even profit margins. It expressed concern that such exchange of information might be considered anti-competitive and breaching the Bill in future. If yes, the daily operation of HKWMA would be affected. Expressing objection to the Bill whilst upholding the spirit of anti-monopoly law, HKWMA urged the Administration to withdraw the Bill.	
025231 – 025519	A.M. International Manufacturing Company Ltd (A.M. International)	While A.M. International did not object to the Bill, it made the following suggestions for consideration of the Administration – (a) the drafting of the Bill should be made clearer; (b) representatives from SMEs or experts who were well	

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		<p>versed in competition issues should be invited to assist in drafting the Bill and defining specific terms;</p> <p>(c) a grace period of about three years during which undertakings breaching the competition rules would not be brought before the Tribunal for adjudication should be provided to facilitate compliance of the business sector with the new legislative requirements; and</p> <p>(d) the provisions in the Bill should be reviewed again to facilitate further implementation in future.</p> <p>A.M. International remarked that due consideration should be given to local circumstances and public education instead of heavy penalties was of utmost importance in regulating anti-competitive behaviour in the long run.</p>	
025520 – 025621	Treasure Glory Asia Limited (Treasure Glory)	Treasure Glory expressed concern about falling prey to the legislation. It hoped that the Administration would prepare clearer guidelines for further consideration of the business community. Alternatively, the Administration should consider withdrawing the Bill.	
025622 – 025838	Treasure Will Limited (Treasure Will)	Treasure Will expressed concern that the Guidelines were ambiguous and some of the specific terms were not defined clearly. Since the high litigation fees were not affordable for most of the SMEs, it was expected that many of them might breach the competition rules unknowingly. Referring to the competition law in Singapore, Treasure Will expressed concern that SMEs would fall prey to the legislation and become the target of enforcement while large consortia could circumvent the rules with the assistance of legal experts. Given the many grey areas in the Bill, Treasure Will urged the Administration to withdraw the Bill.	
025839 – 030157	Consumer Council (CC)	Presentation of views (CB(1)2790/10-11(09)). CC supported the enactment of an effective competition law with a view to benefiting consumers.	
030158 – 030947	Chairman Administration	<p><u>Preliminary response by the Administration</u></p> <p>The Administration thanked deputations' views and made the following responses –</p> <p>(a) the draft Guidelines were prepared on a provisional basis and merely served to indicate the likely topics to be covered in the future guidelines to be issued by the Commission, which would include more details and concrete examples after consulting the relevant stakeholders and having regard to local circumstances;</p> <p>(b) in respect of the suggestion of providing a longer</p>	

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		<p>transitional period, the Administration said that it was indeed the policy intent to implement the Bill in phases after its enactment to allow sufficient time for setting up the Commission and the Tribunal and preparing the guidelines before the competition rules came into force, so that the public and the business sector could familiarize themselves with the new legal requirements during the transitional period and make necessary adjustments. It was expected that the transitional period would take about a year;</p> <p>(c) the Administration was considering the "de minimis" arrangement to allay the concerns of SMEs, including the appropriate threshold and the manner in which the arrangements would be implemented;</p> <p>(d) the Administration noted the suggestions to carve out the vertical agreements and mergers from the proposed conduct rules; and</p> <p>(e) the Administration explained that the second conduct rule which covered the abuse of a substantial degree of market power in a market was in fact having very similar effect as the anti-monopoly legislation in overseas jurisdictions. To effectively tackle all forms of anti-competitive conduct that adversely affected competition in Hong Kong, the Bill also prohibited agreements between undertakings such as price-fixing and bid-rigging which had the object or effect of preventing, restricting or distorting competition. The Administration supplemented that prohibitions in anti-monopoly law in other jurisdictions were also similar to the first and second conduct rules under the Bill.</p> <p>The Administration reiterated that it would respond to the concerns expressed by different sectors of the community in the fourth quarter of 2011.</p>	
030948 – 031504	Chairman Mr Ronny TONG Administration	<p>Mr Ronny TONG highlighted that competition law was in place in over 120 countries where SMEs continued to conduct normal businesses. Noting the worries of SMEs, he urged the Administration to step up public education and brief SMEs on the core elements of the Bill, in particular the circumstances under which exchange of information amongst competitors would give rise to competition concerns.</p> <p>The Administration responded that at previous briefings to the business sector including SMEs, the key elements of the Bill, including the scope of the proposed conduct rules, had been introduced. As the draft Guidelines prepared by the Administration for Bill Committee's information were provisional in nature, it did not cover all the details on</p>	

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		<p>which the future Commission would elaborate in the actual guidelines to be issued after consultation with the stakeholders.</p> <p>Drawing reference to overseas experience, the Administration noted that most SMEs would benefit from the immunity under the "de minimis" arrangements and be excluded from the competition law, as their conduct would unlikely have an appreciable adverse effect on competition unless hardcore conduct were involved. In fact, SMEs in overseas jurisdictions welcomed the competition law which protected them from being harassed by large consortia.</p> <p>In respect of information sharing, the Administration explained that in the normal course of business, exchange of information between undertakings would not give rise to competition concerns unless it led to price co-ordination or had significantly eliminated competition between the undertakings.</p>	
031505 – 031836	Chairman Ms Emily LAU CC	<p>Ms Emily LAU thanked deputations' views and affirmed that the Bills Committee would further discuss with the Administration about SMEs' worries. It was expected that the Bill would bring benefits to both the business sector and consumers.</p> <p>Taking note of the concerns of the business community, Ms LAU asked CC whether it had conducted any research to study the adverse impact of the Bill on SMEs, if any. CC had organized seminars for SMEs to share their worries. Nevertheless, CC believed that there should be an appropriate and effective cross-sector competition law to regulate anti-competitive activities and enhance overall economic efficiency as well as consumer protection.</p>	
031837 – 032322	Chairman Mr Jeffrey LAM Administration	<p>Mr Jeffrey LAM thanked deputations' views. He noted that in some overseas jurisdictions, the enactment of the Bill had not brought about a more open market offering consumers more choices at competitive prices. He also expressed concern about resources allocation for the Commission in future.</p> <p>In response, the Administration advised that financial provisions had been earmarked for the establishment and operation of the Commission, which would be tasked, inter alia, to promote public understanding about the competition law and to combat serious anti-competitive conduct having an appreciable adverse effect on competition, regardless of the size of the undertakings concerned. The Government would review the resource allocation in due course to ensure that the Commission could discharge its statutory functions effectively.</p>	
032323 –	Chairman	Dr Margaret NG thanked deputations' views and urged the	

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032818	Dr Margaret NG Administration CC	<p>Administration to take into account the comments as necessary.</p> <p>Dr NG also expressed support to the views of CC which presented an objective perspective to pinpoint the existing competition concerns and that the Bill should curb anti-competitive practices to protect consumers' benefits. She further asked the Administration how it would take forward the different views expressed by Law Soc and HKGCC concerning the clarity of the Guidelines.</p> <p>The Administration said that the draft Guidelines were drawn up with reference to overseas experience and case law to indicate the likely topics to be covered in the actual guidelines to be issued by the Commission for interpreting and giving effect to the proposed conduct rules. The Commission would consult relevant stakeholders and prepare the actual guidelines with more details and illustrative examples. As the competition law was principle-based, it was considered more appropriate for the Commission to issue the Guidelines having regard to local circumstances to facilitate understanding of and compliance with the law amid changes of the economy.</p> <p>As regards its views on the Guidelines, CC would provide a submission after the meeting for consideration of the Bills Committee.</p>	
032819 – 033206	Chairman Mr LEUNG Kwok-hung	<p>Mr LEUNG Kwok-hung reiterated his suggestion of including an express provision in the principal legislation stipulating that the objective of the Bill was to safeguard consumers' benefits. He further proposed that representatives from SMEs should be appointed to the Commission.</p> <p>Mr LEUNG remarked that to enlist support from all sectors of the community to the Bill, the Administration should demonstrate to what extent the proposed legislation could guard against monopoly by large consortia. He also urged the Administration to enhance the clarity and certainty of the Bill to allay SMEs' worries.</p>	
033207 – 033838	Chairman Administration CC	<p>Taking note of the deep worries of SMEs, the Chairman asked the Administration how it would explain to SMEs that they would not be the target of enforcement.</p> <p>The Administration emphasized that the objective of the Bill was to safeguard the competitive process of the market and to bring benefits to the society, including consumers at all levels. It clarified that monopoly itself did not constitute a breach of the proposed conduct rules unless the undertaking concerned had abused its substantial degree of market power to foreclose the market and crowd out other competitors. In sum, conduct of undertakings, large and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>small, would be subject to regulation under the Bill. With the "de minimis" arrangements in place, small agreements or conduct of minor significance of undertakings, in particular SMEs, would be excluded from the Bill so that the Commission could focus on combating hardcore anti-competitive conduct.</p> <p>CC also considered that to safeguard consumers' benefits, all anti-competitive practices should be prohibited regardless of whether they were carried out by large consortia or SMEs. It was believed that apart from imposing appropriate sanctions for anti-competitive conduct, the level of penalties should be sufficiently deterrent to prevent the recurrence of anti-competitive behaviour and encourage compliance by the business community with the competition rules.</p>	
033839 – 034237	Chairman Dr Robert HANSON Mr Andrew SHUEN Mr Ronny TONG	<p>Dr Robert HANSON and Mr Andrew SHUEN expressed grave concern about the high legal costs to be incurred by SMEs for compliance with the competition rules.</p> <p>Discussion whether law-practising members of the Bills Committee who might make a lucrative business after the enactment of the Bill should refrain from scrutinizing and voting on the Bill.</p>	
034238 – 034614	Chairman Mr CHAN Kam-lam	<p>Mr CHAN Kam-lam said that he would support the Bill only if it could truly enhance economic efficiency and the free flow of trade as well as protecting the benefits of consumers. However, he did not see that the existing provisions of the Bill would create a level-playing field conducive to the survival of SMEs which mainly pledged for anti-monopoly legislation. He opined that the various views expressed by the deputations should be taken into account in scrutinizing the Bill.</p>	
034615 – 035142	Chairman Mr Paul TSE CC	<p>Mr Paul TSE declared that he was a legal practitioner. As regards the concern of the deputations that the enactment of the Bill might benefit lawyers and hence, law-practising members should refrain from scrutinizing the Bill to avoid conflict of interest, he considered such concern unfair as the enactment of every bill could potentially lead to more litigation and make the legal profession a lucrative business.</p> <p>Since Hong Kong was ranked the freest economy in the world, Mr TSE asked CC whether the Bill could address competition concerns effectively under different local circumstances, and protect consumers if a number of SMEs were forced out of business due to high compliance cost leaving large consortia to dominate the market.</p> <p>Noting that the Government would put forth further proposals in response to community's views and concerns,</p>	

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		<p>CC was concerned that the Bill and the future guidelines, after incorporating these proposals, would still remain appropriate in scope and effective in deterring anti-competitive practices.</p>	
035143 – 035911	<p>Chairman SME Committee of LP 港粵中小企聯合會 HKGCC A.M. International Mr Peter WONG HKMMA</p>	<p>SME Committee of LP expressed concern about the arrangements that many sensitive issues were left to the Commission for decision whilst the composition and operation of which had yet to be confirmed. It also opined that the clarity of the Bill should be enhanced.</p> <p>港粵中小企聯合會 was worried that SMEs instead of large consortia were the target of enforcement and many of them would likely close down after the implementation of the Bill.</p> <p>HKGCC agreed to the views of Law Soc that the guidelines to be drawn up by the Commission should be in detail to facilitate the public to understand the proposed conduct rules. It was also of the view that hardcore anti-competitive conduct should be distinguished from other less serious infringements in the guidelines to enhance voluntary compliance with the new law.</p> <p>A.M. International opined that with a vast consumer market in the Mainland, consumers would not be deprived of the benefits of competition. It further expressed support to the need to guard against monopoly by large consortia.</p> <p>By citing some real examples, Mr Peter WONG pointed out that anti-competitive practices somehow would benefit consumers. Furthermore, the impacts of the Bill on local professional bodies should also be studied carefully.</p> <p>HKMMA opined that the Administration should ensure that the Bill would suit the local context instead of modelling some parts of different pieces of competition law implemented in other jurisdictions. It further suggested that the Administration should in the first place regulate the monopolies produced by the Government itself.</p>	
035912 – 040008	<p>Chairman Administration</p>	<p>The Chairman thanked deputations' views and invited the Administration to provide a written response to the views and comments expressed at the meeting and in the submissions. Further views on the Bill would also be welcomed.</p> <p>Date of next meeting.</p>	