

立法會
Legislative Council

LC Paper No. CB(1)2384/11-12
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by the Administration)

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Bills Committee on Competition Bill

**Minutes of the 31st meeting held on
Tuesday, 14 February 2012, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
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
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
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 Jeffrey LAM Kin-fung, GBS, 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
Hon CHAN Hak-kan
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Hon WONG Kwok-kin, BBS
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
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 LAM Tai-fai, BBS, JP
Dr Hon LEUNG Ka-lau
Hon Paul TSE Wai-chun, JP

Public Officers attending : Agenda item I

Mr Gregory SO Kam-leung, JP
Secretary for Commerce & Economic Development

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 and
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 : Mr Derek LO
Chief Council Secretary (1)6

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Sarah YUEN
Senior Council Secretary (1)6

Action

I Meeting with the Administration

- (LC Paper No. CB(1)1031/11-12(01) —List of follow-up actions arising from the discussion at the meeting on 31 January 2012
- LC Paper No. CB(1)1031/11-12(02) —Administration's paper on exemption arrangements for statutory bodies under the Competition Bill
- LC Paper No. CB(1)320/10-11(02) —Administration's information paper on overview of major components of the Competition Bill (paragraphs 25 to 30 on exemption)
- LC Paper No. CB(3)885/09-10 —The Bill
- LC Paper No. CB(1)320/10-11(04) —Marked-up copy of the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)320/10-11(03) —Assistant Legal Adviser's letter dated 26 October 2010 to the Administration (paragraph on clause 5)
- LC Paper No. CB(1)1034/10-11(05) —Administration's response to CB(1)320/10-11(03) (paragraph 4)
- LC Paper No. CB(1)1523/10-11(02) —Administration's response to follow-up questions arising from the meeting on 22 February 2011 (paragraphs 12 to 14 on exemption))

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

Declaration of interests

2. As the exemption arrangements for statutory bodies under the Bill would be

examined at this meeting, the Chairman drew members' attention to the requirement for Members to disclose personal pecuniary interests under Rules 83A and 84 of the Rules of Procedure. At the suggestion of Mr CHAN Kam-lam, the Bills Committee agreed that members should declare if they had any association with the statutory bodies regardless of whether pecuniary interests were involved. In recognition that the number of statutory bodies exceeded 500, and that the Register of Members' Interests (the Register) was readily available on the Internet for public inspection, the Bills Committee agreed to Mr Abraham SHEK's suggestion that members could declare such interests by referring to the Register. The Chairman, Ms Emily LAU, Mr WONG Ting-kwong, Miss Tanya CHAN, Mr CHAN Kam-lam, Mr WONG Kwok-kin, Mr James TO, Mr Jeffrey LAM, Mr Abraham SHEK, Mrs Regina IP, Mr CHAN Kin-por, Dr Margaret NG, Ir Dr Raymond HO, Ms Starry LEE, Dr Philip WONG, Mr Paul CHAN, Ms Miriam LAU and Mrs Sophie LEUNG then declared that they were members of the statutory bodies given in the Register and/or the Legislative Council (LegCo) Commission as shown in its membership list.

3. The following members also declared their membership which was not recorded in the Register –

- (a) Mr CHAN Kam-lam was a member of the Travel Industry Compensation Fund Management Board;
- (b) Mr WONG Kwok-kin was a non-executive director of the Management Board of the Mandatory Provident Fund Schemes Authority;
- (c) Mrs Regina IP was once a Council Member of the Hong Kong Trade Development Council (TDC), and a Board Director of the Aviation Security Company Limited, a subsidiary company of the Airport Authority responsible for providing aviation security services at the Hong Kong International Airport;
- (d) Dr Margaret NG was a member of Helena May;
- (e) Mr Paul CHAN was the Chairman of the Professional Services Advisory Committee of TDC;
- (f) Mr Jeffrey LAM was a Council Member of TDC, and former Chairman of the Advisory Board of the Hong Kong Export Credit Insurance Corporation;
- (g) Mr WONG Ting-kwong was the Chairman of the MPF Industry Schemes Committee, a member of Po Leung Kuk Advisory Board,

and the Convenor of the Industry Consultative Network for Import and Export, Employees Retraining Board; and

(h) Dr Philip WONG was a Council Member of TDC.

4. The Bills Committee agreed that there was no need for members to declare interests in detail every time the exemption arrangements were discussed, and that it would suffice for members to declare interests at the beginning of the meeting(s) concerned by referring to the Register. In this regard, the Chairman also reminded members to declare any further interests in writing as necessary.

5. The Chairman declared that he was the representative of the Federation of Hong Kong Industries General Committee and the Federation of Hong Kong Industries at LegCo, and invited the Bills Committee to consider whether he should continue to preside over the discussion on the exemption arrangements. Members agreed that he should continue to chair this meeting.

Statutory bodies to be exempted from the Bill

6. Mr LEE Cheuk-yan expressed concern about exempting nearly all statutory bodies from the Bill. In particular, he was concerned about the proposal to exempt TDC considering the many complaints about its monopoly and the high fees it charged for taking part in its trade fairs, and the difficulty in ensuring it would not engage in anti-competitive activities if it was exempted. Mrs Regina IP also considered it undesirable to exempt TDC, and opined that the Administration had failed to provide an objective and logical explanation to assure members that it was fair to exempt the highly controversial TDC from the Bill while the Ocean Park, which similarly helped implement Government policies, would not be exempted. In her view, while TDC's conduct relating to the discharge of its statutory functions could be exempted, its profit-making economic activities should be subject to regulation of the Bill. If not, it would be unfair to the private sector, which would be regulated and hence would have to incur significant costs for complying with the enacted Competition Ordinance.

7. Mr Ronny TONG, Ms Emily LAU and Mr WONG Yuk-man shared the views of Mr LEE Cheuk-yan and Mrs Regina IP. Mr TONG pointed out that there were already provisions in the Bill to exempt individual activities and conducts from the Bill as necessary. As such, there was no need to take the initiative to exempt most statutory bodies in their entirety from the Bill as presently proposed. Dr Margaret NG echoed his point, and proposed that to ensure fairness, exemption should instead be granted on the merits of individual cases by the Chief Executive in Council according to relevant provisions.

8. Mr Ronny TONG therefore urged the Administration to review the

proposed list of statutory bodies to be exempted from the Bill. If not, he might introduce a Committee Stage amendment (CSA) to delete clause 3 of the Bill. Ms Emily LAU stated that she would support the above CSA if justified, and further questioned the exemption of Hongkong Post which in her view would place the Government above the law. On a similar note, Ms Cyd HO queried the exemption of the Urban Renewal Authority (URA) and the Lingnan University/Council, which in her view were not performing their statutory roles satisfactorily. Mr WONG Yuk-man added that it might also be inappropriate to exempt the self-financed extra-mural courses organized by universities in competition with private universities.

9. Mr Jeffrey LAM, Mr CHAN Kin-por, Mr WONG Ting-kwong, Dr Philip WONG and Ms Miriam LAU, however, found the proposed list of exempted bodies agreeable, and expressed support for exempting TDC from the Bill in recognition of its important role and contribution in promoting trade development. While also indicating support for TDC's exemption, Mr CHAN Kam-lam said that the list of exempted bodies should be reviewed after implementation of the enacted Competition Ordinance for a certain period. Mr WONG Ting-kwong further indicated support for exempting URA and the Hospital Authority.

10. To allow sufficient time for discussion, the Chairman extended the meeting by 15 minutes.

Follow-up actions required of the Administration

11. The Bills Committee requested the Administration to take the following actions –

Admin.

- (a) consider making an undertaking at the resumption of the Second Reading debate on the Bill to review and revise as necessary the enacted Competition Ordinance, in particular the list of statutory bodies presently proposed to be exempted from the Bill, two to three years after implementation of the enacted Competition Ordinance; and
- (b) provide a paper on the validity of the concerns expressed by the small and medium enterprises (SMEs) about the likely consequences if TDC was not exempted from the Bill, in particular details on:
 - (i) the work done by TDC and the assistance it had provided to SMEs in the past; and
 - (ii) whether and how TDC would be restricted from continuing the

above work and assistance if it was not exempted.

II Any other business

Invitation of public views

Clerk

12. Members agreed to invite the public to give views on the exemption arrangements, and decided that the meeting already scheduled for 28 February 2012 at 2:30 pm should be extended to end at 6:30 pm to receive these views. As a result, the meeting originally scheduled for 20 February 2012 at 2:30 pm would be cancelled.

13. There being no other business, the meeting ended at 4:15 pm.

Council Business Division 1
Legislative Council Secretariat
17 July 2012

**Proceedings of the thirty-first meeting of
the Bills Committee on Competition Bill
on Tuesday, 14 February 2012, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

| Time marker | Speaker | Subject(s) | Action required |
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| Agenda Item I – Meeting with the Administration | | | |
| 000314 – 001739 | Chairman Ms Emily LAU Mr WONG Ting-kwong Miss Tanya CHAN Mr CHAN Kam-lam Mr WONG Kwok-kin Mr James TO Mr Jeffrey LAM Mr Abraham SHEK Mrs Regina IP Mr CHAN Kin-por Mr Ronny TONG Assistant Legal Adviser 2 (ALA2) Dr Margaret NG | <p>The Chairman drew members' attention to the requirement for Members to disclose personal pecuniary interests under Rules 83A and 84 of the Rules of Procedure, having regard that they might be associated with certain statutory bodies to be exempted from the Bill, the arrangements of which would be examined at this meeting.</p> <p>Members respectively declared interests.</p> <p>Mr Jeffrey LAM enquired about the need to declare interests at every meeting the exemption arrangements were discussed, pointing out that the relevant details were already available in the Register of Members' Interests (the Register).</p> <p>ALA2 advised that according to Rule 83A of the Rules of Procedure, a member should not speak on a matter in which he had a pecuniary interest, whether direct or indirect, except where he disclosed the nature of that interest. He and Ms Emily LAU opined that notwithstanding the availability of the relevant particulars in the Register, members still had to meet the above disclosure requirement which was the interpretation of the Committee on Members' Interests in the past.</p> <p>Further discussion on how members should declare interests at future meeting(s) held to discuss the exemption arrangements</p> | |
| <i>Discussion on the Administration's paper on exemption arrangements for statutory bodies under the Competition Bill</i> <i>(LC Paper No. CB(1)1031/11-12(02))</i> | | | |
| 001740 – 002536 | Chairman Administration | Briefing by the Administration on its paper on exemption arrangements for statutory bodies under the Competition Bill (LC Paper No. CB(1)1031/11-12(02)) | |
| 002537– 003250 | Chairman Mr LEE Cheuk-yan Administration | <p>Mr LEE Cheuk-yan expressed the following concerns –</p> <p>(a) the proposal to exempt the Hong Kong Trade Development Council (TDC) from the Bill was questionable considering the many complaints about its monopoly and the high fees it charged for taking part in its trade fairs and exhibitions, and the difficulties in ensuring that it would not engage in any anti-competitive activities if it was exempted;</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>(b) some private hospitals might be exempted from the Bill by virtue of the exemption of the charity organizations that operated them; and</p> <p>(c) it was undesirable to exempt so many statutory bodies, lest people would have the impression that the Bill was directed at the private sector only, while the public sector and probably even the MTR Corporation Limited (MTRCL) would be exempted.</p> <p>The Administration made the following response –</p> <p>(a) TDC played a pivotal role and made significant contribution to the development and promotion of Hong Kong trade. Its mission and statutory functions differed from that of the profit-driven private operators, as manifest in TDC's readiness to provide assistance to the small and medium enterprises (SMEs) by continuing to organize trade promotion activities at a loss during the economic downturn. In fact, in 2010-2011, over 40 000 enterprises had used various services of TDC at lower-than-market prices. Some 14 000 of these enterprises had taken part in exhibitions organized by TDC;</p> <p>(b) TDC did not maintain a monopoly, noting that it only organized 29 of the 101 trade exhibitions organized in Hong Kong in 2010. Of the 29 exhibitions, four were organized in partnership with other private operators;</p> <p>(c) the Administration, in particular the Competition Policy Advisory Group (COMPAG), would monitor the statutory bodies exempted from the Bill, and would request them to rectify their anti-competitive behaviour if they were found to have breached competition rules without justifiable causes; and</p> <p>(d) given that private hospitals and MTRCL were established as companies, they would not be exempted from the Bill.</p> | |
| 003251 – 003933 | Chairman Mrs Regina IP Administration | <p>Mrs Regina IP expressed the following views/concerns –</p> <p>(a) the New People's Party objected to the Bill on grounds that it only benefitted legal professionals;</p> <p>(b) the Administration had failed to assure members that the exemption arrangements were fair because it could not provide an objective and logical explanation of why the highly controversial TDC would be exempted from the Bill while the Ocean Park, which similarly helped implement Government</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>policies, would not be exempted; and</p> <p>(c) whether TDC had monopoly should be judged by the scale, popularity, timing and importance of the exhibitions it organized and not the number. Moreover, while TDC's statutory functions could be exempted, its profit-making economic activities should be regulated. If not, it would be unfair to the private sector, which would be regulated and hence would have to incur significant costs for complying with the enacted Competition Ordinance.</p> <p>The Administration reiterated its response to Mr LEE Cheuk-yan above and made the following points –</p> <p>(a) case law and jurisprudence in overseas jurisdictions suggested that economic activities directly related to the provision of an essential public service or the implementation of public policy were usually excluded from the application of the competition law to ensure that the services to the public would not be affected;</p> <p>(b) TDC's economic activities were directly related to the implementation of public policy and there was wide support of its work;</p> <p>(c) booking of exhibition spaces at the Hong Kong Convention and Exhibitions Centre was managed in a transparent and fair manner by a venue operator independent of TDC, and the same booking protocol applied to TDC and other exhibition organizers; and</p> <p>(d) Not all TDC exhibitions were profitable. In fact, 20 exhibitions organized by TDC in 2010-2011 had incurred loss.</p> | |
| 003934 – 004720 | Chairman Mr Ronny TONG Administration | <p>Mr Ronny TONG expressed regret at the proposed exemption arrangements, and indicated wish to introduce a Committee Stage amendment (CSA) to delete clause 3 of the Bill if the Administration would not review the proposed list of exempted bodies, which he considered undesirable for the following reasons –</p> <p>(a) it was unfair to exempt nearly all statutory bodies from the Bill because this would have the effect of placing the Government above law, while the commercial sector would be subject to regulation;</p> <p>(b) there were already provisions in the Bill to exempt individual activities and conduct, including those of TDC, from the Bill to suit public interests. There was therefore no need to exempt specific parties in their entirety from the Bill;</p> | |

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| | | <p>(c) the fact that certain statutory bodies were not engaging in economic activities was not a valid reason for exempting them because they could still commit anti-competitive acts; and</p> <p>(d) if statutory bodies, which were not part of the Government, were exempted from the Bill, the Competition Commission would have no way to monitor their activities and rectify their anti-competitive behaviour as necessary.</p> <p>Mr TONG therefore urged the Administration to undertake to conduct a review of the enacted Competition Ordinance after a certain period, or to provide for a sunset clause such that clause 3 would expire two years after enactment of the Ordinance, thereby allowing time to examine the issue of exemption of statutory bodies in greater detail.</p> <p>The Administration made the following response –</p> <p>(a) the majority of statutory bodies proposed to be exempted from the Bill did not engage in economic activities or only engaged in economic activities which had insignificant effect on the market. For other statutory bodies engaging in economic activities, the economic activities concerned were directly related to the provision of an essential public service or the implementation of public policies. The proposed exemption for statutory bodies was to ensure that the efficient implementation of public policies, as well as measures which were required to respond swiftly to the needs of the community, would not be affected by the introduction of the competition law;</p> <p>(b) the functions of the statutory bodies, as well as their services or activities, were regulated by the ordinances by or under which they were established or constituted. The relevant bureaux/departments (B&Ds) would play a monitoring role to ensure the statutory bodies within their purview were operating in accordance with the ambits and the regulatory frameworks laid down by the relevant ordinances, as well as the competition principles advocated by the Government;</p> <p>(c) while COMPAG had no statutory power to investigate or rectify anti-competitive behavior of private undertakings, and hence the need for a statutory regulatory regime, it would be able to handle complaints on statutory bodies with the assistance of the relevant B&Ds. Under clause 5 of the Bill, the Chief Executive (CE) in Council might also by regulation apply the competition rules to</p> | |

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| | | <p>statutory bodies if the specified criteria were met; and</p> <p>(d) the Administration would consider members' suggestion to make an undertaking during the debate at the resumption of the Second Reading of the Bill to review the enacted Competition Ordinance.</p> | <p>The Administration to take action as requested in paragraph 11(a)</p> |
| <p>004721 – 004926</p> | <p>Chairman Ir Dr Raymond HO Ms Starry LEE Dr Philip WONG Mr Paul CHAN Ms Miriam LAU</p> | <p>Declaration of interests</p> | |
| <p>004927 – 005620</p> | <p>Chairman Mr Jeffrey LAM Administration</p> | <p>Mr Jeffrey LAM expressed support for exempting TDC, the Hong Kong Export Credit Insurance Corporation (HKECIC) and the Hong Kong Productivity Council from the Bill for the contribution they had made to Hong Kong in performing their respective functions. He also expressed the following views –</p> <p>(a) the claim that TDC charged high fees for participation in its exhibitions was untrue. Those parties which had made such claims were in fact TDC's competitors, in particular large international exhibition organizers; and</p> <p>(b) unlike private undertakings, HKECIC and TDC would not stop organizing activities to assist SMEs even when incurring loss. They would organize even more such activities during economic downturn. As such, there would not be any conflict of interest to exempt them from the Bill.</p> <p>The Administration responded that –</p> <p>(a) in making the decision to exempt TDC, the Administration had taken into account the fact that the operation of TDC differed from other private operators in the exhibition market. Unlike private operators which were profit-driven and might reduce their scale of operation during economic downturn, TDC was tasked to provide SMEs with affordable and efficient means for promoting their products and services to overseas buyers, particularly in times of economic hardship when TDC would be requested by the Government to offer more support in terms of trade promotion, even if at a loss to TDC at times, to maintain the competitiveness of SMEs and Hong Kong;</p> <p>(b) if exempted statutory bodies engaged in any anti-competitive behaviour, the Administration would</p> | |

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| | | <p>require them to cease such misconduct; and</p> <p>(c) the Administration would review the enacted Bill after a few years of the operation of the law.</p> | |
| 005621 – 005703 | Chairman Mrs Sophie LEUNG | Declaration of interests | |
| 005704-005841 | Chairman Mr CHAN Kin-por | <p>Mr CHAN Kin-por indicated support for exempting TDC from the Bill in consideration of its important role and good performance in –</p> <p>(a) promoting trade development, in particular when times were bad;</p> <p>(b) providing necessary assistance to SMEs, so that many of them strongly supported exemption of TDC from the Bill; and</p> <p>(c) creating job and business opportunities for Hong Kong people.</p> | |
| 005842 – 005914 | Chairman Mr Jeffrey LAM | Declaration of interests | |
| 005915–010228 | Chairman Mr CHAN Kam-lam | <p>Mr CHAN Kam-lam opined that the Administration should undertake to review and revise as necessary the list of statutory bodies to be exempted from the Bill after implementation of the enacted Competition Ordinance for a certain period. Pending the review, TDC should be exempted from the Bill to provide it greater flexibility to support SMEs and trade development in recognition of –</p> <p>(a) its contribution in promoting Hong Kong's trade activities overseas;</p> <p>(b) its non-profit making nature;</p> <p>(c) the high transparency of its operation; and</p> <p>(d) that despite complaints about the levels of fees which TDC charged, they were determined by demand, and there was competition to ensure they were reasonable.</p> | |
| 010229 – 010736 | Chairman Dr Margaret NG Administration | <p>Dr Margaret NG shared Mr Ronny TONG's views above, and considered it unfair to exempt statutory bodies while subjecting private undertakings to the regulation of the Bill considering the high compliance costs. In her view, instead of exempting nearly all statutory bodies, exemption should be granted on the merits of individual cases according to relevant provisions. If not, the above unfairness would render it difficult to take forward the Bill.</p> <p>The Administration made the following response –</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>(a) the list of statutory bodies to be exempted from the Bill was provided in response to members' request. To effect the proposal on not exempting certain statutory bodies, CE in Council would need to make regulation under clause 5(1)(a) of the Bill with respect to the statutory bodies concerned after its enactment; and</p> <p>(b) the justifications for exempting certain statutory bodies, in particular TDC, were set out in LC Paper No. CB(1)1031/11-12(02).</p> | |
| 010737 – 011256 | Chairman Ms Cyd HO Administration | <p>Ms Cyd HO expressed concern about exempting the following statutory bodies from the Bill –</p> <p>(a) URA, in recognition of the great power it wielded and the large-scale economic activities it engaged in;</p> <p>(b) the Lingnan University/Council, considering recent reports that it intended to close the Lingnan Kindergarten under the pretext that the building concerned had to be demolished because of imminent danger, so as to pave way for sale of the site for property development to make profits; and</p> <p>(c) the Sisters of the Precious Blood and Soeurs de Saint Paul de Chartres, lest the profit-making private hospitals operated by them might be exempted as well.</p> <p>The Administration responded that –</p> <p>(a) URA assisted the Government in implementing policies of urban renewal and redevelopment. Unlike profit-making undertakings, URA's major consideration in taking forward urban renewal projects was not the redevelopment value of the site but the priority of the respective project based on prescribed factors laid down in the Urban Renewal Strategy. When a URA project made a profit, this was to be ploughed back to support other projects which were not financially viable;</p> <p>(b) the Lingnan University/Council assisted the Government in providing education service. Moreover, the above quoted case involving Lingnan Kindergarten was outside the ambit of the Bill, which aimed at tackling anti-competitive conduct; and</p> <p>(c) the Sisters of the Precious Blood was engaging in chaplaincy, education and community services. Its hospital was operated separately from the above services.</p> | |

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| 011257 – 011742 | Chairman Ms Emily LAU Administration | <p>Ms Emily LAU indicated intention to support Mr Ronny TONG's proposed CSA above if justified and expressed the following views –</p> <ul style="list-style-type: none"> (a) the proposed exemption arrangements were not conducive to early enactment of the Bill, and the public should be consulted; (b) the public services and economic activities of the statutory bodies should be separately handled, and that the latter should not be exempted; (c) the Administration should make reference to the exemption arrangements in the European Union; and (d) the exemption of the Hong Kong Polytechnic University (PolyU) from the Bill was questionable as the hotel it operated was profit-making. <p>Ms LAU enquired whether Hongkong Post would also be exempted having regard that it also conducted economic activities.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) the exemption mechanism was transparent and the relevant considerations for not exempting certain statutory bodies had also been clearly explained in clause 5(2); (b) the hotel under PolyU was operated by a limited company set up under PolyU, and the company would not be exempted from the Bill; and (c) the Bill would not apply to the Hongkong Post, which was part of the Government. Its conduct was regulated by the relevant legislation and oversight of the relevant bureaux. <p>Noting the Administration's response in (c) above, Ms LAU considered it undesirable that the Government should always place itself above law.</p> <p>Discussion on the arrangements for inviting public views on the exemption arrangements</p> | |
| 011743 – 012214 | Chairman Mr WONG Ting-kwong | <p>Mr WONG Ting-kwong declared interests, and indicated support for exempting TDC from the Bill because –</p> <ul style="list-style-type: none"> (a) public interests should include the interests of TDC's clients and not those of private exhibition organizers, who as TDC's competitors naturally objected to its exemption. Along this line, consumers' and not operators' interests should be safeguarded; | |

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| | | <p>(b) TDC was making great contribution to SMEs' development, and their strong support for TDC's exemption should be noted; and</p> <p>(c) the fares charged by TDC were low and its services were good. Moreover, TDC could help create more business opportunities for SMEs and hence bring Hong Kong job opportunities and economic benefits.</p> <p>Mr WONG also indicated support for exempting URA and the Hospital Authority from the Bill on grounds that they were serving Hong Kong people, and were acting according to the relevant legislation. In fact, contrary to Ms Cyd HO's views, many people welcomed redevelopment of their property by URA.</p> | |
| 012215 – 012446 | Chairman Dr Philip WONG Administration | <p>Dr Philip WONG shared Mr WONG Ting-kwong's views above and expressed strong support for exempting TDC from the Bill.</p> <p>Dr WONG expressed the following views –</p> <p>(a) charges for joining TDC's exhibitions were value for money because its exhibitions were of a high quality and popular; and</p> <p>(b) the services provided by other exhibition organizers could not meet the needs of Hong Kong enterprises. As such, although they were free to compete with TDC, their exhibitions were unpopular.</p> <p>The Administration reiterated that to promote trade, TDC had organized a number of exhibitions and trade fairs in which private exhibition organizers were not interested because of the possible losses in running the shows. TDC's contribution in this regard was duly acknowledged by the Administration.</p> | |
| 012447 – 013115 | Chairman Mr WONG Yuk-man | <p>Mr WONG Yuk-man expressed the following views –</p> <p>(a) TDC's exhibitions were popular because TDC enjoyed use of the most convenient exhibition venues. The competition between TDC and other exhibition organizers was therefore unfair. Moreover, because of the substantial profits so generated, the management of TDC were excessively remunerated;</p> <p>(b) with substantial resources injected into TDC, it was only reasonable that it contributed to trade development in Hong Kong. It was undesirable that the relevant parties had mobilized a large number of organizations to send in similar submissions in support of TDC's exemption. In his view, this was</p> | |

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| | | <p>in fact transfer of interests;</p> <p>(c) it might not be appropriate to exempt the self-financed extra-mural courses organized by universities in competition with private universities. Instead, such economic activities should be singled out for regulation under the Bill. If not, there would not be any guarantee that their courses would be organized in compliance with the competition rules, especially as the provisions on the "stand-alone" right of private actions would be taken out from the Bill;</p> <p>(d) instead of granting statutory bodies with economic activities exemption from the Bill in entirety, exemption should be granted to their activities on a case by case basis according to the relevant provisions; and</p> <p>(e) to avoid taking political factors into consideration when deciding which statutory bodies to exempt and to ensure consistency, it might be advisable to transfer the power under clause 5(1) to grant exemption from the Bill from the CE in Council to the Competition Commission.</p> | |
| 013116– 013553 | Chairman Ms Miriam LAU Administration | Ms Miriam LAU pointed out that SMEs were really keen to see TDC exempted from the Bill in recognition of the essential services TDC provided to them, which because of the great quantity and variety could not be exempted on a case by case basis. At her request, the Administration agreed to provide a paper on the validity of the concerns expressed by SMEs about the likely consequences if TDC was not exempted from the Bill, in particular details on the work done by TDC and the assistance it had provided to SMEs in the past, and whether and how TDC would be restricted from continuing the above work and assistance if it was not exempted. | The Administration to take action as requested in paragraph 11(b) |
| 013554 – 014004 | Chairman Administration | <p>The Chairman enquired why both the Federation of Hong Kong Industries General Committee and the Federation of Hong Kong Industries (FHKI) would not be exempted from the Bill, and why FHKI's General Committee and FHKI were counted as two statutory bodies.</p> <p>The Administration responded that –</p> <p>(a) FHKI's services, such as the Hong Kong Q-Mark Product Scheme, its Certification Services, and issue of all kinds of certificates of origin including the Certificate of Origin - Re-export, the Certificate of Origin – processing, etc., were all economic activities. Based on current assessment, FHKI was considered to have met the cumulative criteria in clause 5(2) of the Bill, in which case the competition</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>rules and enforcement provisions would apply;</p> <p>(b) according to the Federation of Hong Kong Industries Ordinance (Cap. 321), FHKI General Committee and FHKI had been established as two separate statutory bodies; and</p> <p>(c) although FHKI was a statutory body, its activities were in fact similar to those of other chambers of commerce, which were private entities and hence would not be exempted.</p> | |
| 014005 – 014227 | Chairman Mrs Regina IP Administration | <p>Mrs Regina IP pointed out that –</p> <p>(a) there was a need for the Administration to provide details on the remuneration packages as well as the annual pay rises of TDC's senior management and the relevant considerations. This was because such good pay could help explain why TDC had the obligation to perform its statutory functions satisfactorily;</p> <p>(b) TDC had sometimes acted unfairly in competition with other exhibition organizers by abusing its market power;</p> <p>(c) competition would only cause prices to go down and not up as some parties had claimed; and</p> <p>(d) TDC would continue to serve SMEs whether exempted or not because it had been tasked to do so under the relevant legislation, and that sufficient resources had been made available to it for the purpose.</p> <p>The Administration did not consider it appropriate to provide information on remuneration, which was unrelated to the scrutiny of the Bill.</p> | |
| 014228 – 014631 | Chairman Dr Margaret NG Administration Mr Ronny TONG | <p>Dr Margaret NG questioned the need to exempt the Court of Final Appeal, the High Court and the Magistrates' Court which, unlike undertakings, would not engage in economic activities, and called for improvement to the drafting of the relevant provisions if necessary.</p> <p>The Administration explained that the above entities had been included in the exemption list because they were statutory bodies within the meaning of the Bill. Moreover, courts might also provide some form of economic activities such as copying services, though the scale of such activities would be rather limited.</p> <p>Mr Ronny TONG pointed out that although the judiciary might not conduct business activities, they might still engage in economic activities whether through engagement</p> | |

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| | | of services or conduct of procurement activities. | |
| 014632 – 014717 | Chairman Administration | Meeting arrangements | |

Council Business Division 1
Legislative Council Secretariat
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