

Bills Committee on Competition Bill

List of follow-up actions arising from the discussion at the meeting on 3 January 2012

At the meeting on 3 January 2012, the Administration was requested to provide written responses to the following concerns/requests raised by members –

- (1) In relation to clause 80 on termination of leniency agreement, consider providing for a minimum period in sub-clause (3) for making of representations about a proposed termination, as in clauses 14 and 29 on rescission of decision;
- (2) In relation to the proposed new clause 80A on warning notices, consider making the warning notice a reviewable determination under clause 81 in the light of members' views as follows:
 - Mr Albert HO considers it undesirable that a person wrongfully issued a warning notice would not be able to challenge the notice at the Competition Tribunal, as provided under clause 81. Nor would there be a mechanism for releasing the person concerned from the notice as provided under clause 61.
 - Dr Margaret NG and the Chairman consider it undesirable to make the warning notice a reviewable determination under clause 81 because the purpose of introducing the warning notice is to provide an informal option to obviate legal actions and simplify matters. If, however, the notice is made a reviewable determination, it may give rise to unnecessary legal actions and defeat the above purpose of introducing the notice. Moreover, the right to challenge the notice may not be necessary considering that there may in fact be no consequence or liability whether the person issued the notice accepts the notice or not.
- (3) Drafting issues
 - (i) consider amending clause 78 to ensure that the definition of "officer" therein would be consistent with that in the Companies Bill currently under scrutiny;

- (ii) amend the phrase "賴以支持" in the Chinese text of the proposed new clause 80A(2)(c) to "賴以支持";
- (iii) make reference to clause 73 and consider amending the proposed clause 80A to clearly provide for the extension of the warning period where necessary;
- (iv) consider refining the proposed Committee Stage amendments to clause 91(3) as set out in LC Paper No. CB(1)643/11-12(03) to:
 - clarify how the amount of a pecuniary penalty imposed under clause 91(1) would be calculated, particularly how to determine whether a contravention has "continued for a period of more than one year but not more than 3 years" and in turn whether the amended clause 91(3)(a) or 91(3)(b) should apply; and
 - clarify whether it is the policy intention that the turnovers of both financial years concerned would be taken into account when calculating the pecuniary penalty to be imposed for a contravention that straddles two financial years but has continued for not more than one calendar year;

Schedule 2 - Commitments

- (v) amend section 4 to ensure that the Competition Commission would make use of the latest technology available (in particular the Internet) to publish a commitment or variation of a commitment;
- (vi) amend section 12(2) to achieve consistency with section 7(2);
- (vii) amend the English text of section 14(b) to achieve consistency with its Chinese text; and
- (viii) consider amending the first sentence of the English text of section 15 to achieve consistency with sections 5 and 10.