

Bills Committee on Competition Bill

Supplementary summary of views expressed by deputations on institutional arrangements¹ of the Bill and the Administration's response (as at 11 March 2011)

Concerns/Views	Administration's comments
<u>Competition Commission (Schedule 5)</u>	
<p><u>Committees and Delegation (Parts 7 and 8)</u></p> <p>As the requirement for persons to be appointed as committee members is not set out in the Bill, it is inappropriate to give the proposed Competition Commission (the Commission) the discretion to establish committees and to broadly delegate its functions, including decision making, to a committee. (PCCW Limited – CB(1)1355/10-11(04))</p>	<p>The power of the Commission to establish committees to advise on specific matters or perform specific functions of the Commission is common in other statutory bodies having regulatory role. We consider this power appropriate to allow the Commission to perform its statutory functions more effectively and efficiently. Sections 28 and 29 of Schedule 5 of the Bill set out the scope of power of, and the extent of delegation by, the Commission in respect of the committees. For example, the Commission must specify the terms of reference of the committees, which will be subject to the control of the Commission (section 28(6) of Schedule 5). The Commission also must not delegate certain functions to the committees, including the power to make any application to the Competition Tribunal under the Ordinance other than an application for an interim order under section 93 or 96. We consider that the Bill as currently drafted has provided sufficient safeguards against the exercise of discretion by the Commission in delegating</p>

¹ Matters relating to guidelines to be issued by the Commission (clause 35 in Part 2, and clauses 38, 40 and 58 in Part 3) and the enforcement powers of the Commission and Tribunal (Parts 4 to 6) will be separately dealt with under components 5, 7 and 8 of the work plan (CB(1)320/10-11(01)) endorsed by the Bills Committee.

Concerns/Views	Administration's comments
	functions to its committees.
<u>Concurrent jurisdiction relating to telecommunications and broadcasting (Part 11)</u>	
<p>All competition work should be undertaken by the Commission. The concurrent jurisdiction proposal should be deleted for the following reasons: the Telecommunications Authority and Broadcasting Authority lack in-depth competition law expertise; avoid inconsistent approaches, analysis, findings and decisions among multiple regulators; avoid fragmenting the limited expertise exists in Hong Kong; and more costly involving multiple regulators as well as for the undertaking(s) concerned. (PCCW Limited – CB(1)1355/10-11(04))</p>	<p>We consider that the proposed concurrent jurisdiction has the merits of retaining the specialist knowledge of the Broadcasting Authority (BA) and the Telecommunications Authority (TA) in competition regulation in the broadcasting and telecommunications sectors. The BA and the TA only have jurisdiction in relation to the conduct of undertakings which are their respective licensees. While enforcing the law, the Commission, the BA and the TA will adopt the same regulatory guidelines. Moreover, application to review the determinations of the Commission, the BA and the TA under Part 5 of the Bill would all be considered by the Competition Tribunal. Hence, the question of inconsistent application of the law should not arise.</p> <p>Clauses 160 and 161 of the Bill also require the three competition regulators to enter into a Memorandum of Understanding (MOU) and agree on the transfer of competition matters between them to ensure good coordination and clarity in the exercise of the concurrent jurisdiction.</p>