

**For discussion
on 2 April 2012**

Bills Committee on Competition Bill

Responses to outstanding issues arising from previous meetings

Purpose

This paper sets out the Administration's responses to the outstanding issues raised by Members concerning the Competition Commission (the Commission) and the conduct rules under the Competition Bill (the Bill), as well as a number of minor drafting issues raised at the meeting of 19 March 2012.

Commission-related issues

(a) Delegable functions of the Commission

2. Section 29(1) of Schedule 5 to the Bill provides that subject to subsection (2), the Commission may delegate any of its functions to its member, committee, Chief Executive Officer, employee by name, or holder of any office in the Commission. Section 29(2) of Schedule 5 provides for a list of functions of the Commission which may not be delegated under subsection (1). When examining the provision, Members requested a review of the powers and functions of the Commission that can be delegated under section 29 of Schedule 5. The outcome of our review is at **Appendix A**.

3. At present, the majority of the functions delegable within the Bill's framework concern the day-to-day operation of the Commission, such as processing a complaint; making a decision on exemption for a particular agreement or conduct; accepting commitment from an undertaking to address concerns about a possible, and relatively minor, contravention of the competition rule, etc. Empowering the Commission to delegate these functions would ensure the effective and efficient discharge of the Commission's statutory duties. On the other hand, those non-delegable functions currently provided under section 29(2) of Schedule 5 relate to the core functions of the Commission that carry substantial and read-across implications, such as bringing proceedings before the Competition Tribunal (the Tribunal) (except those proceedings relating to interim orders), the issue of block exemption orders that apply to a class of

agreements, or the duty to prepare regulatory guidelines relating to the competition rule and the manner in which it expects to enforce the law.

4. Having reviewed the functions/ powers of the Commission, we propose that in addition to those items in section 29(2) of Schedule 5, the following functions of the Commission should also be included in the provision to make them a non-delegable matter –

- (a) ***The power to vary or revoke a block exemption order (clause 20)***: similar to the power to issue a block exemption order under clause 15, the power to vary or revoke such an order would impact on a large number of agreements. This power should only be exercised by the Commission itself and should not be made delegable.
- (b) ***The power to issue an infringement notice (clause 66)***: the infringement notice is aimed at tackling contravention of a conduct rule (e.g. anti-competitive agreement involving hardcore conduct) in lieu of bringing proceedings before the Tribunal. As an alternative to legal proceedings, the decision to issue an infringement notice should be made by the Commission and such power should not be delegated.
- (c) ***To seek an appeal to the Court of Appeal against any decision of the Tribunal (clause 153)***: the Commission, as a party to proceedings, may appeal against a decision of the Tribunal. This concerns initiating a legal action in the court and similar to the Commission's non-delegable power to bring proceedings before the Tribunal, the Commission's decision to lodge an appeal before the Court of Appeal should not be delegated.
- (d) ***To submit an annual report and the audited accounts to the Chief Executive (CE) for tabling at the Legislative Council (LegCo) (section 26 of Schedule 5)***: the annual report, together with the audited accounts, is an important document holding the Commission accountable to LegCo and the general public. The duty to submit the annual report and the audited accounts to the CE should therefore be made a non-delegable function, just like the Commission's duty to submit to the CE its estimates under section 19 of Schedule 5.

We shall amend section 29(2) of Schedule 5 accordingly.

(b) Membership of the Commission

5. Section 2(1) of Schedule 5 to the Bill provides that the Commission is to consist of not less than five members appointed by the CE. There is currently no cap on the number of members. At the meeting of 29 March 2011, Members suggested that a cap on the number of Commission members should be spelt out in the Bill to enhance certainty of the likely scale of operation of the Commission.¹ Drawing reference from the cap in Singapore's Competition Act in respect of their Competition Commission (a maximum of 16 members) and the ceilings for other statutory bodies in Hong Kong with varying size and functions (see details at **Appendix B**), we propose that the total number of Commission members (including the Chairman) in section 2(1) of Schedule 5 should be capped at 16, thus making the size of the Commission ranging between five (the lower limit) and 16 members (the proposed ceiling). We consider this range reasonable having regard to the functions of the Commission.

(c) Reviewable determination

6. When examining clause 80A of the Bill, Members suggested that the Commission's decision to issue a warning notice should be made one of the reviewable determinations of the Tribunal under clause 81 of the Bill. We have carefully considered Members' views. The warning notice is intended to address business sector's concern that they may unintentionally breach the first conduct rule. It simply provides information to the undertaking and has no legal consequences per se. Undertakings would be advised of the remedial actions that could address the Commission's concerns, and be given a reasonable period to rectify the misconduct. Enforcement actions will only start if the contravention continues/ is repeated after the warning period and will only be brought against contravention that occurred since the commencement of the warning notice. Therefore, we do not consider it necessary to make the Commission's decision to issue a warning notice a reviewable determination under clause 81. If the undertaking wants to redress a procedural impropriety, the Commission's decision of issuing a warning notice is subject to judicial review.

¹ Paper No. CB(1)1684/10-11(02) (discussed on 29 March 2011) and No. CB(1)1868/10-11(02) (discussed on 13 April 2011) provide information on the appointment to the competition authorities in overseas jurisdictions.

Issues relating to the conduct rules

(a) Formulation of the conduct rules

7. There are views that the first and the second conduct rules of the Bill should be formulated in such a way that only conduct with an object or effect of affecting competition appreciably would be caught by the competition law. Some deputations also expressed the view that relevant provisions should be included in the Bill to make it clear that inference of an undertaking's object would be reached objectively. In addition, some suggested that the definition of "undertaking" in clause 2 of the Bill, which is based on the case law and regulatory guidelines of the European Union (EU) and the United Kingdom (UK), may be refined.

8. As explained in our previous submissions, the proposed conduct rules in the Bill model on the corresponding competition provisions in the EU, the UK and Singapore. There is plenty of case law and a wealth of jurisprudence in these overseas jurisdictions which suggest that only conduct that has an appreciable adverse effect on competition would be prohibited, and how "undertaking" is interpreted for the purpose of competition law. In applying the prohibitions, case law in these competition regimes also suggest that "object" means not the subjective intent of the parties when engaging in anti-competitive conduct, but the objective meaning and purpose of the conduct considered in economic context. Moving away from the current formulation of conduct rules, as suggested by some Members and deputations, would lead to the loss of application of a large pool of case law and jurisprudence, thereby creating uncertainty for the business sector in Hong Kong.

9. With the introduction of the warning notice for alleged contravention of the first conduct rule for agreements not involving serious anti-competitive conduct (which are defined in the Bill), the concerns over legal certainty in the application of the general prohibitions should have been addressed. Moreover, the future Commission would be required to issue regulatory guidelines to elaborate on the key elements of the general prohibitions to provide practical and detailed guidance on how the principle-based competition law would be interpreted and applied. Hence, we consider it appropriate to retain the current formulation of the conduct rules in the Bill.

(b) Threshold for triggering the second conduct rule

10. Some Members and deputations suggest that the threshold of triggering the second conduct rule should be changed from "substantial degree of market

power” to “dominance/ dominant position”. Alternatively, some propose that the criteria for assessing the degree of market power and for determining what constitute an abuse under the second conduct rule should be spelt out in the Bill.

11. As explained at previous meetings, we consider “substantial degree of market power” a more suitable threshold for Hong Kong. Case law and regulatory guidelines in the EU, the UK and Singapore suggest that a market share persistently over 50% is required to establish dominance in a market. Given Hong Kong’s small and geographically concentrated economy, it is not unusual for certain sectors such as supermarkets to have an oligopolistic structure involving few big companies, each constituting a significant, albeit short of 50%, market share. While market share is only one of the determinants for assessing market power, the presumption of 50% market share for “dominance” would inevitably influence the Commission in its enforcement if we were to use the same language in the Bill. Adopting the threshold of “dominance” would thus affect the Commission’s ability to address public concerns over anti-competitive conduct of some oligopolies in Hong Kong. The “substantial degree of market power” is therefore a preferred threshold to “dominance”.

12. Concerning the relevant factors for determining the degree of market power or abuse, it is the international best practice for the competition authorities to elaborate these in detail in the regulatory guidelines. It is because market power is a matter of degree and what constitutes an abuse should be assessed on a case-by-case basis having regard to the changing market circumstances and different market structures of individual sectors. Specifying the relevant criteria or a fixed market share threshold in the Bill would restrain the Commission’s enforcement against possible contraventions of the second conduct rule in future.

Drafting issues

13. For the sake of consistency and clarity, we would propose amendments to the following provisions of the Bill:

- (a) ***Clause 176(5)***: to change “*before that date*” in paragraph (b) to “*before the date on which the regulations are published in the Gazette*” to achieve consistency with clause 176(5)(a);
- (b) ***Schedule 9***:
 - (i) ***section 3(2)(a)***: to change “*發生*” to “*作出*” in the Chinese text to achieve consistency with section 3(3)(a);

- (ii) **section 4(2)(a)**: to change “發生” with “作出” in the Chinese text to achieve consistency with section 4(3)(a);
- (iii) **section 4(2)(b)**: to change “訂立” to “制定” in the Chinese text to achieve consistency with sections 4(4), 4(5), 4(6) and 4(7);
- (iv) **section 4(3)(b)**: to change “訂立” to “制定” in the Chinese text to achieve consistency with sections 4(4), 4(5), 4(6) and 4(7); and
- (v) **section 4(3)**: to change “而《原有條例》的條文就該調查而適用” to “而《原有條例》的條文就該調查而繼續適用” in the Chinese text to achieve consistency with the English text.

Advice sought

14. Members are invited to note the contents of the paper.

Commerce and Economic Development Bureau
March 2012

Appendix A

Review of the functions of the Competition Commission (Commission) under the Competition Bill

Clause	Function/ Power	Should the function/ power be made delegable?	To include in section 29(2) of Schedule 5 as a non-delegable function/ power? ¹
Part 2 (The Conduct Rules)			
9, 11	To consider an application for a decision relating to exclusion/ exemption from the first conduct rule	This function concerns the day-to-day operation of the Commission in enforcing the law and the consideration is subject to the due process as laid down in the provisions. This power should be made delegable to ensure the efficient operation of the Commission.	No
14	To rescind a decision made under clause 11	The law has provided for the parameters within which the Commission may rescind a decision (e.g. grounds for rescission and the procedures). This power should be made delegable.	No
15	To issue a block exemption order	The block exemption order would apply to a category of agreements and carry wide implications. This power should not be made delegable.	Yes (already included as a non-delegable function in paragraph (b) of section 29(2))
20	To vary or revoke a block exemption order	The power to vary or revoke a block exemption order, following a review, might have impact on a large number of agreements. Similar to clause 15, the power to vary or revoke a block exemption order should not be made delegable.	Yes (to include by way of amendment to section 29(2))
24, 26	To consider an application for a decision relating to exclusion/ exemption from the second conduct rule	This function concerns the day-to-day operation of the Commission in enforcing the law and the consideration is subject to the due process as laid down in the provisions. This power should be made delegable to ensure the efficient operation of the Commission.	No

¹ Section 29(1) of Schedule 5 to the Competition Bill provides that subject to subsection (2), the Commission may delegate any of its functions to a Commission member, a committee established by the Commission, the Commission's Chief Executive Officer, an employee by name, or the holder of any office in the Commission. Subsection (2) provides for a list of functions of the Commission which may not be delegated under subsection (1). In other words, those functions not listed in section 29(2) are delegable. For easy reference, the provisions relating to the non-delegable functions are shaded in grey in the table.

Clause	Function/ Power	Should the function/ power be made delegable?	To include in section 29(2) of Schedule 5 as a non-delegable function/ power? ¹
29	To rescind a decision made under clause 26	The law has provided for the parameters within which the Commission may rescind a decision (e.g. grounds for rescission and the procedures). This power should be made delegable.	No
34	To maintain a register of decisions and block exemption orders	The function is administrative in nature and should be made delegable.	No
35	To issue guidelines relating to the conduct rules, decision or block exemption order	The guidelines would form a basis of the Commission's enforcement of the conduct rules and represent how the Commission would give effect to the law. The duty and power to prepare and issue the guidelines should not be delegated.	Yes (already included as a non-delegable function in paragraph (k) of section 29(2))
Part 3 (Complaints and Investigations)			
37, 39	To decide whether to investigate a complaint	This function concerns the day-to-day operation of the Commission in enforcing the law. Whether to investigate a complaint would be a decision based on the strength of evidence. This power should be delegable to ensure the effective operation of the Commission.	No
38, 40, 58	To issue guidelines regarding complaints and investigations	The guidelines would indicate how the Commission would process a complaint and conduct the investigation. The guidelines may also set out the Commission's enforcement priorities. The duty and power to prepare and issue the guidelines should not be delegated.	Yes (already included as a non-delegable function in paragraph (k) of section 29(2))
41, 42, 43	To obtain documents and information, and require persons to attend before the Commission	This function concerns the day-to-day operation of the Commission in enforcing the law and the parameters within which the Commission may operate are clearly set out in the Bill. Section 31 of Schedule 5 further provides that the Commission's power under section 41 (powers to obtain documents and information) could only be delegated or subdelegated to a member of the Commission. Subject to these provisions, the investigatory powers should be made delegable.	No
47	To appoint authorized officers	This function concerns the day-to-day operation of the Commission in enforcing the law. This power should be made delegable.	No

Clause	Function/ Power	Should the function/ power be made delegable?	To include in section 29(2) of Schedule 5 as a non-delegable function/ power? ¹
56, 57	To retain or dispose of property produced to the Commission or obtained under a warrant under Part 3 of the Bill	This function concerns the day-to-day operation of the Commission in enforcing the law and the parameters within which the Commission may operate are clearly set out in the Bill. This power should be made delegable.	No
Part 4 (Enforcement Powers of Commission)			
59	To accept a commitment	This power concerns the day-to-day operation of the Commission in enforcing the law and the parameters within which the Commission may operate are clearly set out in the Bill. This power should be made delegable.	No
60	To withdraw an acceptance of a commitment	This power concerns the day-to-day operation of the Commission in enforcing the law and the parameters within which the Commission may operate are clearly set out in the Bill. This power should be made delegable.	No
61	To vary, substitute or release a commitment	This power concerns the day-to-day operation of the Commission in enforcing the law and the parameters within which the Commission may operate are clearly set out in the Bill. This power should be made delegable.	No
62	To enforce a commitment through applying to the Competition Tribunal (Tribunal) for an order	This power relates to the enforcement of a commitment that is accepted, and should be differentiated from bringing a proceeding against the contravention of a competition rule. This power should be made delegable.	No
63	To maintain a register of commitments	The function is administrative in nature and should be made delegable.	No
66	To issue an infringement notice	This power relates to enforcement against a contravention of the first conduct rule (involving serious anti-competitive conduct) or the second conduct rule in lieu of bringing proceedings to the Tribunal direct. Prima facie, there is a case for bringing the matter to the Tribunal. Noting that the power to make any application to the Tribunal under the Ordinance is non-delegable by virtue of section 29(2)(l) of Schedule 5, the power to issue an infringement notice, which offers an alternative to proceedings before the Tribunal, should likewise be non-delegable.	Yes (by way of amendment to section 29(2))

Clause	Function/ Power	Should the function/ power be made delegable?	To include in section 29(2) of Schedule 5 as a non-delegable function/ power? ¹
72	To withdraw an infringement notice	These provisions concern the administration of the infringement notice issued by the Commission. These powers should be made delegable.	No
73	To extend a compliance period specified in an infringement notice		
76	To maintain a register of commitments to comply with the requirements of an infringement notice	The function is administrative in nature and should be made delegable.	No
77	To publish the infringement notices	The function is administrative in nature and should be made delegable.	No
79	To make leniency agreements	Leniency acts as a Commission's enforcement tool in exchange for a person's co-operation in an investigation or proceedings. It does not affect the right of the Commission in taking out enforcement against a person other than those relating to pecuniary penalty. The power to make leniency agreements should be made delegable to ensure the efficient operation of the Commission.	No
80	To terminate a leniency agreement	Similar to clause 79, the power to terminate a leniency agreement is operational in nature and should be made delegable.	No
80A	To issue a warning notice	This power relates to enforcement, through a more light-handed approach, against a contravention of the first conduct rule involving non-serious anti-competitive conduct. It concerns contravention of a less serious nature and the notice seeks to put the undertakings on notice before the Commission considers any further actions in respect of the contravention occurred or continued after the expiry of the warning period. Given its nature, the power to issue a warning notice should be made delegable.	
Part 6 (Enforcement before Tribunal)			
90, 92	To apply to the Tribunal for pecuniary penalty and other orders	This concerns the bringing of proceedings before the Tribunal for a contravention of a competition rule. The need for taking this course of action must be examined very carefully and the power should not be made delegable.	Yes (already included as a non-delegable function in paragraph (l) of section 29(2))

Clause	Function/ Power	Should the function/ power be made delegable?	To include in section 29(2) of Schedule 5 as a non-delegable function/ power? ¹
93, 96	To apply to the Tribunal for interim orders	The interim orders are interlocutory in nature and usually time-sensitive. As such, the power to apply for interim orders should be made delegable.	No (already excluded from the scope of non-delegable functions (bringing proceedings before the Tribunal) in paragraph (l) of section 29(2))
95, 97	To apply to the Tribunal for an order in relation to anticipated merger/ merger	This concerns the bringing of proceedings before the Tribunal for a contravention of the merger rule. The need for taking this course of action must be examined very carefully and the power should not be made delegable.	Yes (already included as a non-delegable function in paragraph (l) of section 29(2))
99	To apply to the Tribunal for the disqualification order	This concerns the bringing of proceedings before the Tribunal for a contravention of a competition rule. The need for taking this course of action must be examined very carefully and the power should not be made delegable.	Yes (already included as a non-delegable function in paragraph (l) of section 29(2))
Part 7 (Private Action)			
119	To intervene in any proceedings involving a contravention of a conduct rule	This concerns the Commission's role in a competition-related proceeding, subject to leave of court. The need for taking this course of action must be examined very carefully and the power should not be made delegable.	Yes (already included as a non-delegable function in paragraph (l) of section 29(2))
120	To participate in any proceedings involving a contravention of a conduct rule	This concerns the Commission's role in a competition-related proceeding, subject to leave of court (except at the invitation of the Tribunal). The need for taking this course of action must be examined very carefully and the power should not be made delegable.	Yes (already included as a non-delegable function in paragraph (l) of section 29(2))
Part 8 (Disclosure of Information)			
123, 124	To establish and maintain adequate procedural safeguards to preserve the confidentiality of any confidential information	The function is administrative in nature and should be made delegable.	No
125, 126	To disclose confidential information with lawful	This power concerns the day-to-day operation of the Commission in	No

Clause	Function/ Power	Should the function/ power be made delegable?	To include in section 29(2) of Schedule 5 as a non-delegable function/ power? ¹
	authority (e.g. in the performance of any function of the Commission)	enforcing the law and the parameters within which the Commission may operate are clearly set out in the Bill. This power should be made delegable.	
Part 9 (Competition Commission)			
129	To task the Commission with a number of core functions	Clause 129 is a general description of the core functions of the Commission and the elaboration of these functions are scattered in different parts of the Bill. These general functions are delegable unless otherwise stated in the relevant provision giving effect to these functions.	N/A
130	To make, give effect to, assign or accept the assignment of, vary or rescind any agreement	This power is administrative and general in nature and should be made delegable, subject to specific limits of authorization or provisions to the contrary (e.g. section 29(2)(m) of Schedule 5).	No
	To receive and spend money		
	To borrow money, with the approval of the Financial Secretary (FS)	This power should only be exercised in exceptional circumstances and should not be made delegable.	Yes (already included as a non-delegable function in paragraph (m) of section 29(2))
	To invest funds in a manner approved by the FS	This power should only be exercised in exceptional circumstances and should not be made delegable.	Yes (already included as a non-delegable function in paragraph (n) of section 29(2))
To become a member or affiliate of any competition-related international body	This relates to the day-to-day operation of the Commission concerning liaison with its counterparts. This should be made delegable.	No	
Part 10 (Competition Tribunal)			
153	To seek an appeal to the Court of Appeal against any decision of the Tribunal	This concerns the bringing of an appeal before the Court of Appeal against a decision of the Tribunal. The need for taking this course of action must be examined very carefully and the power should not be made delegable.	Yes (by way of amendment to section 29(2))
Part 11 (Concurrent Jurisdiction)			
160	To transfer competition matter to another competition	This concerns the day-to-day operation of the Commission in enforcing the law	No

Clause	Function/ Power	Should the function/ power be made delegable?	To include in section 29(2) of Schedule 5 as a non-delegable function/ power? ¹
	authority	and is subject to the arrangements agreed under the Memorandum of Understanding (MOU) between the competition regulators. This should be made delegable.	
161	To prepare and sign a MOU among the competition authorities	This concerns the administrative arrangement in respect of the exercise of the concurrent jurisdiction within the parameters set out in Schedule 6 of the Bill. This should be made delegable.	No
Part 12 (Miscellaneous)			
168	To apply to the Tribunal for a financial penalty relating to a contravention of section 167 (indemnities)	This concerns the bringing of proceedings before the Tribunal for a contravention of a competition rule. The need for taking this course of action must be examined very carefully and the power should not be made delegable.	Yes (already included as a non-delegable function in paragraph (l) of section 29(2))
Schedule 5 (Competition Commission)			
10	To appoint a Chief Executive Officer (CEO) of the Commission on such terms it determines, subject to the approval of the Chief Executive	The CEO is the head of the executive arm of the Commission and will be responsible for overseeing the day-to-day operation and enforcement work of the Commission. Given the importance of this appointment, the power to appoint the CEO and to determine the terms of appointment should not be made delegable.	Yes (already included as a non-delegable function in paragraph (c) of section 29(2))
11	To employ staff and engage any contract for services to perform the Commission's functions, and to determine the remuneration and other conditions of employment/ contract.	This power concerns the day-to-day operation of the Commission. As the Administration would enter into a Memorandum of Administrative Arrangements with the Commission setting out the principles concerning the remuneration of staff, the power to employ staff and determine their terms of remuneration should be made delegable to ensure the efficient operation of the Commission.	No
16	To cause minutes of the proceedings at each meeting of the Commission to be recorded and preserved	This is administrative in nature and should be made delegable.	No
19	To submit to the Chief Executive estimates of its income and expenditure for the next financial year	This is a core duty of the Commission to ensure prudent financial planning. This duty should not be made delegable.	Yes (already included as a non-delegable function in paragraph (i) of

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			section 29(2))
23	To keep proper accounts and ensure that an annual statement of accounts is prepared after the end of each financial year	This is a core duty of the Commission to ensure prudent financial planning. This duty should not be made delegable.	Yes (already included as a non-delegable function in paragraph (j) of section 29(2))
24	To appoint an auditor	This duty is administrative in nature and is part of the wider financial planning process. This should be made delegable.	No
25	To prepare an annual report	This duty is administrative in nature and the Commission is required by section 26 of Schedule 5 to submit the annual report to the Chief Executive. The duty to prepare the report should be made delegable.	No
26	To submit the annual report and the audited accounts to the Chief Executive for tabling at LegCo	This is a core duty of the Commission to ensure accountability to LegCo and the general public. This duty should not be made delegable.	Yes (by way of amendment to section 29(2))
28	To establish committees	The power to establish committees should only be exercised by the Commission itself to ensure adequate control over the committee's work. This power should not be made delegable.	Yes (already included as a non-delegable function in paragraph (a) of section 29(2))
	To appoint the chairperson or a member of a committee, or to revoke the appointments	The power to appoint or revoke is incidental to the power to establish the committee. Such power should not be made delegable.	Yes (already included as a non-delegable function in paragraph (f) of section 29(2))
	To specify or amend the terms of reference of a committee	The power to specify or amend the terms of reference is incidental to the power to establish the committee. Such power should not be made delegable.	Yes (already included as a non-delegable function in paragraph (e) & (g) of section 29(2))
	To discharge or reconstitute a committee	The power to establish a committee rests with the Commission and the power to discharge or reconstitute it should likewise remain in the hands of the Commission. Such power should	Yes (already included as a non-delegable

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		not be made delegable.	function in paragraph (h) of section 29(2))
28A	To maintain a register of interests of members of the Commission	This duty is administrative in nature and should be made delegable.	No
30	To authorise a delegate to subdelegate a function	The scope of delegation of function is already clearly set out in section 29 of Schedule 5 as well as section 31 (which restricts delegation/ subdelegation of powers to obtain documents and information under section 41 of the Bill only to members of the Commission). Subject to these provisions, the Commission should be given flexibility to determine whether it is appropriate for the delegate to subdelegate a function. This power should be made delegable.	No
32	To make rules regulating the meeting procedures, the administration of the Commission and the conflict of interest	This duty is administrative in nature and should be made delegable.	No
33	To authenticate the application of the seal of the Commission	Section 33 of Schedule 5 provides that only the chairperson or some other members of the Commission authorized by the Commission may authenticate the application of the seal. Given the importance of the authentication, the power to authorize a person to authenticate the application of the seal should not be made delegable.	Yes (already included as a non-delegable function in paragraph (o) of section 29(2))
Schedule 7 (Mergers)			
7	To commence an investigation of a merger	This function concerns the day-to-day operation of the Commission in enforcing the law. Whether to investigate a complaint would be a question of fact based on the strength of evidence. This power should be made delegable.	No
11, 13	To consider an application for a decision relating to exclusion/ exemption from the merger rule	This function concerns the day-to-day operation of the Commission in enforcing the law and the consideration is subject to the due process as laid down in the provisions. This power should be made delegable to ensure the efficient operation of the Commission.	No
15	To rescind a decision made under clause 13	The law has provided for the parameters within which the Commission may rescind a decision (e.g. grounds for	No

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		rescission and the procedures). This power should be made delegable.	
16	To maintain a register of merger decisions	The function is administrative in nature and should be made delegable.	No
17	To issue guidelines relating to the application of the merger rule and the exclusions from it	The guidelines would form a basis of the Commission's enforcement of the conduct rules and represent how the Commission would give effect to the law. The duty and power to prepare and issue the guidelines should not be delegated.	Yes (already included as non-delegable function in paragraph (k) of section 29(2))

Appendix B**Statutory cap on the number of members of selected statutory bodies**

	Statutory Body	Provision	Maximum number of members
1.	Consumer Council	Section 6(1), Consumer Council Ordinance (Cap. 216)	1 Chairman + 1 Vice Chairman + not more than 20 other persons <u>Maximum: 22</u>
2.	Communications Authority	Section 8(1), Communications Authority Ordinance (Cap. 616)	5-10 members + 1 public officer + Director-General <u>Maximum: 12</u>
3.	Equal Opportunities Commission	Section 63(3), Sex Discrimination Ordinance (Cap. 480)	1 Chairperson + 4-16 other members <u>Maximum: 17</u>
4.	Minimum Wage Commission	Section 11(2), Minimum Wage Ordinance (Cap. 608)	1 Chairperson + not more than 9 other members who are not public officers + not more than 3 other members who are public officers <u>Maximum: 13</u>
5.	West Kowloon Cultural District Authority	Section 6(3), West Kowloon Cultural District Authority Ordinance (Cap. 601)	1 Chairman + 1 Chief Executive Officer + 8-15 other members who are not public officers + 3 other members who are public officers <u>Maximum: 20</u>
6.	Hospital Authority	Section 3(3), Hospital Authority Ordinance (Cap. 113)	1 Chairman + not more than 3 public officers + not more than 4 principal officers + not more than 23 other members <u>Maximum: 31</u>