

Bills Committee on Competition Bill

**List of follow-up actions arising from the discussion
at the meeting on 12 May 2011**

At the meeting on 12 May 2011, the Administration was requested to provide written responses to the following concerns/requests -

- (a) advise whether members of the proposed Competition Tribunal (the Tribunal), in performing functions under the Bill, were regarded as members of a court or not;
- (b) given that the Tribunal consisted of the judges of the Court of First Instance and the Chief Executive was to appoint two of them to be the President and the Deputy President of the Tribunal, advise whether the President/the Deputy President of the Tribunal was performing a judicial function or an administrative/executive function;
- (c) in view that the President and Deputy President of the Tribunal were to hold office for a term of at least three years and not more than five years, clarify whether their independence would be undermined;
- (d) compare the power, structure and functions of the Tribunal with tribunals under other legislation such as the one under the Securities and Futures Ordinance (Cap. 571);
- (e) provide response to the following views and concerns in the submission from The Law Society of Hong Kong (LC Paper No. CB(1)1219/10-11(02)):
 - (i) in relation to clause 143 of the Bill concerning the procedures of the Tribunal, advise what rights of audience would apply, for example with regard to the parties' legal representatives (including solicitors) and whether corporate parties would be allowed to act in person generally; and if not, under what circumstances would they be so allowed; and with or without leave;

- (ii) in relation to clause 153 of the Bill concerning appeal to the Court of Appeal (CA), consider not imposing a leave requirement; or consider imposing the same leave requirement as that for an appeal from the Court of First Instance to CA, i.e., leave should normally be granted unless the grounds of appeal have "no realistic prospects of success", and not a higher requirement as currently provided, i.e. the appeal has "a reasonable prospect of success";
 - (iii) in respect of clause 161(2) of the Bill, consider replacing the word "may" with "shall" as all the matters set out in Schedule 6 to the Bill were considered necessary to be addressed in the Memorandum of Understanding to be signed by the proposed Competition Commission (the Commission), the Broadcasting Authority (BA) and the Telecommunications Authority (TA) (the MOU);
- (f) regarding the proposed concurrent jurisdiction relating to telecommunications and broadcasting,
- (i) compare the scope of the existing regulatory frameworks of BA and TA with that of the Bill;
 - (ii) advise whether the BA and TA could issue guidelines under the Bill or there would only be one set of guidelines to be issued by the Commission;
 - (iii) advise whether any competition matter/complaint case would be left unattended under the proposed concurrent jurisdiction;
 - (iv) instead of concurrent jurisdiction, consider vesting the power of regulating competition matters with the Commission which could delegate to BA and TA the power of investigation etc. to deal with competition cases/complaint case relating to broadcasting and telecommunications;
 - (v) with reference to clause 160 of the Bill, advise the way forward if the competition regulators having concurrent jurisdiction could not reach a consensus on which competition regulator should perform the functions in

relation to a competition matter;

- (vi) address the concerns about the proposed concurrent jurisdiction in the submissions received, including those from PCCW (CB(1)1335/10-11(04) and CB(1)2120/10-11(05)), Hong Kong General Chamber of Commerce (CB(1)1732/10-11(01)) and Dr Andrew Simpson (CB(1)2018/ 10-11(03));
 - (vii) provide information on the existing number of professionals with competition knowledge and experience in handling competition matters relating to telecommunications and broadcasting for TA and BA;
 - (viii) consider deleting clause 157 regarding the interpretation of "concurrent jurisdiction" and review the drafting of clause 160(2) of the Bill to incorporate the interpretation;
 - (ix) amend the Chinese text of clause 159(1)(c) of the Bill;
 - (x) consider submitting the draft MOU prepared by the TA, BA and the future Competition Commission for scrutiny by the Panel on Economic Development; and
 - (xi) consider making copies of the MOU available at the offices of the Commission during ordinary business hours and in other manners, and review the drafting of clause 161(4);
- (g) provide an implementation schedule of the Competition Ordinance (including such preparation tasks as public consultation, drafting and publication of guidelines, community education, preparation and signing of MOU etc.), and the proposed sequence of commencement of different parts of the Ordinance;
- (h) consider including in the Bill a provision for establishing and maintaining a register of interests such that members of the Commission and its committees would be required to register his or her interest as appropriate and relevant meeting documents of the Commission would not be passed to that member having a conflict of interest in the matter under consideration; and

- (i) conduct research on the review reports studying the impact of competition law enforcement prepared by overseas non-government organizations, community bodies or chambers of commerce with credibility, and provide information on the outcome of the study.

Council Business Division 1
Legislative Council Secretariat
16 May 2011