

Bills Committee on Competition Bill

**List of follow-up actions arising from the discussion
at the meeting on 7 June 2011**

At the meeting on 7 June 2011, the Administration was requested to provide written responses to the following concerns/requests –

- (a) consider providing a definition for "competition" in the Bill;
- (b) in respect of a Court of Final Appeal case in 2010 where seventeen cooked food stall operators were accused of conspiracy to defraud in a restricted food stall auction at Tai Po Hui Market in 2004, advise whether the conduct of the stall operators would be regarded as anti-competitive and constitute a breach of the first conduct rule in the Bill;
- (c) given that under section 7K(1) of the Telecommunications Ordinance (Cap. 106) (TO) and section 13(1) of the Broadcasting Ordinance (Cap. 562) (BO), a licensee should not engage in conduct which, in the opinion of the Telecommunications/Broadcasting Authority, had the purpose or effect of preventing or "substantially" restricting competition in a telecommunications/television programme service market, while the word "substantially" was absent in clauses 6 and 21 of the Bill,
 - (i) advise whether the standards for assessing anti-competitive conduct under TO/BO and the Bill were different, and if yes, whether the telecommunications and broadcasting sectors were aware of the relevant change in the standard;
 - (ii) provide cases, if any, on the interpretation of "substantially" restricting competition under TO and BO; and
 - (iii) having regard to the Administration's response that it had done away with the word "substantially" noting that a competition law should be meant to catch only conduct which had an "appreciable adverse effect" on competition (CB(1)1034/10-11(05)), advise whether "substantially" restricting competition was in fact the same as having "appreciable adverse effect" on competition;

- (d) despite Schedule 7 to the Bill provided for a limited scope of application of the merger rule to mergers in relation to carrier licences issued under TO, advise whether anti-competitive agreements relating to mergers would still be covered by clause 6(1) of the Bill, and if yes, consider explicitly excluding such agreements from the application of clause 6(1); and
- (e) consider exempting all types of vertical agreements from the application of the first conduct rule in the Bill.

Council Business Division 1
Legislative Council Secretariat
8 June 2011