

Bills Committee on Competition Bill

**List of follow-up actions arising from the discussion
at the meeting on 11 October 2011**

At the meeting on 11 October 2011, the Administration was requested to provide written responses to the following concerns/requests –

- (a) provide a copy of the Administration's response to The Lion Rock Institute's request for information on the cost of compliance with the competition law;
- (b) in consultation with the Legal Aid Department, provide information regarding whether individuals/small and medium enterprises could apply for legal aid to institute legal actions against anti-competitive conduct or defend themselves against allegations of such conduct ;
- (c) provide as soon as practicable, preferably before the next meeting of the Bills Committee on 25 October 2011, a paper on the new proposals recently worked out by the Administration to address the Bills Committee's concerns regarding five aspects of the Bill (related, namely, to regulatory guidelines, right of private action, maximum pecuniary penalty, "de minimis" arrangements and the merger rule), as recently reported in the press;
- (d) in conjunction with the legal adviser of the Bills Committee, examine and provide a paper on how requests for review and revocation of block exemption orders could be made through a simple procedure, such as by filing an application to the Competition Tribunal, without having to resort to judicial review which would usually incur high legal costs;
- (e) provide a paper on examples of block exemption orders issued overseas, such as in the European Union, the United Kingdom, Singapore, etc;
- (f) in recognition of small and medium enterprises' concern that the first conduct rule as currently drafted might cover vertical agreements, consider and report back on the Chairman's proposal to ensure that the Competition Commission would, upon its

establishment, issue a block exemption order for vertical agreements upfront, and would revoke the order only after it had conducted a study in this regard;

- (g) in relation to clauses 16 and 34 of the Bill concerning procedures regarding block exemption orders, and register of decisions and block exemption orders, respectively –
 - (i) consider and report back at the next meeting of the Bills Committee on some members' view that, instead of allowing the Competition Commission to "publish notice of the proposed block exemption order and maintain the above register in any manner it considers appropriate", the Administration should specify in the above clauses that the Commission should make use of the latest technology available, in particular the Internet, to publish the electronic copy of the notice and maintain the register, so that the proposed block exemption order could be brought to the attention of those likely to be affected by it in a more timely, transparent and easily accessible manner; and
 - (ii) include a paragraph in the paper which the Administration would provide for the next meeting of the Bills Committee to confirm the policy intention that the Competition Commission should make use of the latest technology available, in particular the Internet, to publish the electronic copy of the notice of the proposed block exemption order; and
- (h) in relation to clause 21 of the Bill concerning abuse of market power, provide a paper to respond to –
 - (i) the Chairman's and some deputations' view that the concept of "dominant position" was preferable to "substantial market power" as it had a clearer meaning and was widely used in other jurisdictions; and
 - (ii) some members' view on the need to clearly set out in the Bill the criteria for assessing whether an undertaking had a substantial degree of market power, and for determining whether a conduct might constitute abuse of market power by involving "predatory behaviour towards competitors" or

"limiting production, markets or technical development to the prejudice of consumers".

Council Business Division 1
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13 October 2011