

Bills Committee on Competition Bill

**List of follow-up actions arising from the discussion
at the meeting on 25 October 2011**

At the meeting on 25 October 2011, the Administration was requested to provide written responses to the following concerns/requests regarding its recently proposed amendments to the Bill –

- (a) in respect of the use of HKD 11 million, being the average annual business turnover of small and medium enterprises (SMEs), as the threshold for exclusion from the application of the second conduct rule under the proposed de minimis arrangements:
 - (i) provide a paper to explain how the Administration had worked out the above threshold, including the methodology of the Census and Statistics Department in compiling the statistics from which the average annual business turnover of SMEs from 2005 to 2009 at about HKD 11 million was derived;
 - (ii) provide a breakdown (by turnover level and by staff establishment, etc.) of the companies from which statistics had been compiled for working out the above threshold;
 - (iii) seek from the Inland Revenue Department the aggregated data on the turnover levels of companies paying profits tax in Hong Kong for the Bills Committee's reference, so as to give it a full picture of the distribution of Hong Kong companies by their turnover levels;
 - (iv) find out and explain how and why the Administration had decided that under the Companies Bill currently under scrutiny, a private company would be regarded as small if its total annual revenue did not exceed HKD 50 million; and
 - (v) provide for comparison and reference details on the thresholds, whether expressed in combined market share or turnover or both, adopted by overseas jurisdictions in their de minimis framework;

- (b) provide examples of abuse of market power in overseas jurisdictions;
- (c) clearly explain the factors that would be taken into consideration when determining whether an undertaking had "substantial degree of market power", preferably with case law in overseas jurisdictions to shed light on the most common cases of contravention, or involvement in a contravention, of a conduct rule;
- (d) amend clause 141(1)(c) of the Bill to clarify that the "private actions" mentioned therein referred to follow-on actions, since the Administration had already proposed to take out the provisions on the "stand-alone" right of private actions from the Bill; and
- (e) provide a written response in respect of the scope and timing of the review which the Administration would conduct on the enacted Competition Ordinance.

Council Business Division 1
Legislative Council Secretariat
1 November 2011