

Bills Committee on Competition Bill

**Meeting on
Tuesday, 15 November 2011, at 2:30 pm
in the Chamber of the Legislative Council Building**

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Good afternoon and thank you for inviting members of the public to be here to share their views on the revised competition bill.

On previous visits to Legco, I have articulated my concerns about this bill. ‘Yes’, we do have a competition problem in Hong Kong and ‘No’, the proposed bill does nothing to remedy that problem. The recent revisions have not changed this in any way. As I have stated here before, our competition problems are rooted in a distortive, biased and shortsighted land policy. I have already made those points in this council and elsewhere in academia and in the media, so I will not rehash them again here.

Instead, I will talk today about the role of lawyers and about the government’s failure to conduct an impact assessment. Some of you may have seen some recent articles complaining about the plight of our poor lawyers. First, there is the Hong Kong Competition Law weblog run by a gentleman by the name of Peter Macmillan, who I believe used to be the Head of JSM’s competition law unit. JSM of course being one of Hong Kong’s largest law firms. Mr Macmillan also appeared on RTHK Radio 3 last week. One of his recent articles is entitled “Spare a thought for the lawyers” and I have included the source for it in my written submission. Mr Macmillan seems to be complaining that the lack of a competition law is preventing lawyers from making even more money. But don’t take it from me, here is what he says in his own words, I quote:

“the absence of a general competition law in Hong Kong could be denying these firms a chance to build up a new area of practice which in other jurisdictions can be a major profit centre.”

<http://hkcompetitionlaw.com/2011/11/02/spare-a-thought-for-the-lawyers/>

You may wonder about this man’s audacity but this sentiment is wide-spread amongst lawyers, especially in the big international firms who stand to profit the most from any competition law. In fact, you can find another very recent article along similar lines in the Asian Lawyer journal. There, a person by the name of Anthony Lin also complains that lawyers are being prevented from making more money. In this own words:

“One area of litigation that has proven particularly lucrative to U.S. and European firms over the past few decades does not even exist yet in Hong Kong. A competition law has been in the works for several years but has been held up in the territory's Legislative Council”
<http://www.law.com/jsp/tal/PubArticleFriendlyAL.jsp?id=1202520839053>

Let us hope the bill is permanently held up in Legco.

But let me go back to the greedy lawyers, they are upset because they feel that they are being denied opportunities to make more money. It is as if doctors petitioned the government to introduce some sort of virus into the water supply so that doctors could make more money. When I studied law, the emphasis was on resolving problems, not create new ones. But today, amongst these international firms, the emphasis seems to be on creating problems in order to make more money. It is a complete perversion. The fact is that many international law firms set up competition law units years ago, eagerly awaiting a competition law to leach onto in the quest for more profits. And now, a few years later, these people are evidently getting very impatient. They have spent hundreds of millions but still, there is no competition law.

What does all this mean? Well, if the lawyers are expecting a huge windfall through competition law, then that money has to come from somewhere. Of course, the place it comes from is businesses here in Hong Kong. No wonder these businesses are so upset at the prospect of this bill becoming law. But is there another way of looking at this? Competition law proponents would probably tell me that the economy-wide savings which businesses would reap from so-called ‘fair competition’ would more than make up for the legal costs. But is this really true? In order to gain a better understanding, we would have to take an evidence-based approach and conduct an impact study. So has the government done that? No, they have not. When asked about this omission by the Lion Rock Institute, the Commerce and Economic Development Bureau had this to say, I quote:

“We note that competition jurisdictions overseas do not normally undertake ex ante assessment on the compliance cost and efficiency arising from the implementation of competition law, which will likely to involve a myriad of assumptions and uncertainties as a result of the dynamic changes of the economic landscape of each sector.”

This is very interesting as, not only does it show that the government has not done its homework – allegedly because the others did not do their homework either – but also, if you focus on the second part of the sentence, it exposes the fundamental flaw which lies at the root of all competition laws, namely that they are an exercise in guess-work, making assumptions about future economic conditions and market behaviour. Surely, if the government is so concerned about these uncertainties when it comes doing an impact study, they should be equally if not more concerned about the uncertainties inherent to the law itself.

Thank you.