

Bills Committee on Competition Bill

**List of follow-up actions arising from the discussion
at the meeting on 8 November 2011**

At the meeting on 8 November 2011, the Administration was requested to provide written responses to the following concerns/requests –

- (a) provide a paper, with reference to case law in overseas jurisdictions, to explain whether and if so, which provisions of the Bill could help prevent cases recently reported in the press on small retailers being allegedly forced to sell goods (such as soft drinks and instant noodles) at the retail prices suggested by the suppliers concerned;
- (b) study and report back on whether in overseas jurisdictions, in particular Singapore, the United Kingdom and the European Union, the issue, variation or revocation of block exemption orders were subject to review, as proposed in paragraph 2 of the Administration's responses to follow-up questions arising from the meeting on 11 October 2011 (LC Paper No. CB(1)257/11-12(02));
- (c) provide responses to the following improvement proposals made by some members to address the concerns of small and medium enterprises (SMEs) about being unjustifiably regarded as having a "substantial degree of market power" under clause 21 –
 - (i) stating a specific percentage, say 30%, of market share as one of the criteria for assessing whether an undertaking had a substantial degree of market power. Alternatively, the Secretary for Commerce and Economic Development might highlight the said percentage in his speech during the Second Reading debate on the Bill;
 - (ii) adjusting upwards the recently proposed threshold of HK\$11 million for exclusion from the application of the second conduct rule under the proposed de minimis arrangements; and

- (iii) adopting as the exclusion threshold, as SMEs proposed, the financial criteria for a company to list in the Hong Kong Stock Exchange, i.e. having a revenue of at least HK\$500 million for the most recent audited financial year, or profits of at least HK\$20 million recorded in the most recent year;
- (d) in considering the improvements proposed in paragraph (c) above, the Administration should –
 - (i) address the concern that the improvements proposed in paragraphs (c)(ii) and (c)(iii) above might weaken the power of the Bill in deterring anti-competitive acts committed by SMEs to enlarge their market shares in an emerging market or a geographic market, and give examples to illustrate such acts; and
 - (ii) give the reasons if the Administration did not consider the improvement proposed in paragraph (c)(iii) above preferable;
- (e) provide case law in overseas jurisdictions on agreements or conduct that would be exempted on public policy grounds under provisions similar to clause 31, and on general exclusions from the conduct rules as a result of provisions similar to Schedule 1;

Drafting issues

- (f) consider moving amendments to the following clauses to ensure consistency in the drafting of similar provisions –
 - (i) clauses 7 and 22, by introducing to clause 22 similar Committee Stage amendments which the Administration had earlier undertaken to introduce to clause 7;
 - (ii) the Chinese text of clauses 12(2) and 27(2);
 - (iii) the Chinese text of clauses 14(2) and 29(2); and
 - (iv) the Chinese text of clauses 14(7) and 29(7);

- (g) amend the Chinese text of clause 33(2) to reflect the phrase "by resolution passed" in the English text of this clause with reference to the Chinese text of section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) and section 10(2) of Schedule 7 to the Bill; and
- (h) amend the phrase "在立法會下一屆會期" in the Chinese text of clauses 33(3) and 33(5) to "在立法會下一會期".

Council Business Division 1
Legislative Council Secretariat
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