

立法會
Legislative Council

LC Paper No. CB(1)2758/09-10
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by the Administration)

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Panel on Economic Development

**Minutes of meeting held on
Monday, 28 June 2010, at 10:00 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Jeffrey LAM Kin-fung, SBS, JP (Chairman)
Hon Paul TSE Wai-chun (Deputy Chairman)
Hon Fred LI Wah-ming, SBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Starry LEE Wai-king
Hon Paul CHAN Mo-po, MH, JP
Dr Hon LEUNG Ka-lau
Hon IP Wai-ming, MH
Dr Hon Samson TAM Wai-ho, JP
Hon Tanya CHAN
Hon Albert CHAN Wai-yip

Member attending : Hon LEE Wing-tat

Members absent : Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

**Public officers
attending**

: Agenda Item IV

Mrs Rita LAU NG Wai-lan, JP
Secretary for Commerce and Economic Development

Miss Yvonne CHOI, JP
Permanent Secretary for Commerce and Economic
Development (Commerce, Industry and Tourism)

Mr Gregory SO Kam-leung, JP
Under Secretary for Commerce and Economic
Development

Ms Linda LAI, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)

Miss Wendy CHUNG
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)

Agenda Item V(a)

Mr Philip YUNG, JP
Commissioner for Tourism

Mrs Laura ARON
Assistant Commissioner for Tourism

Agenda item V(b)

Mr YAU Sing-mu, JP
Acting Secretary for Transport and Housing

Miss Emmy WONG
Acting Deputy Secretary for Transport and Housing
(Transport)

Mr CHAN Ming-kwong
Chief Assistant Secretary for Transport and Housing
(Transport)

Ms Aubrey FUNG
Acting Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)

Mr Ben LEUNG, C.M.S.M.
Head of Land Boundary Command
Customs and Excise Department

Agenda item VI

Mr Philip YUNG, JP
Commissioner for Tourism

Mrs Laura ARON
Assistant Commissioner for Tourism

Attendance by invitation : Agenda Item V(a)

Hong Kong Tourism Board

Mr Anthony LAU
Executive Director

Mr Patrick KWOK
General Manager, Business Development

Agenda item VI

Travel Industry Council of Hong Kong

Mr Michael WU, MH
Chairman

Mr Joseph TUNG, JP
Executive Director

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (1)6

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Angel SHEK
Senior Council Secretary (1)1

Ms Michelle NIEN
Legislative Assistant (1)9

Agenda Item IV

Mr Watson CHAN
Head (Research and Library Services Division)

Mr Jackie WU
Research Officer 1

Action

- I Confirmation of minutes and matters arising**
(LC Paper No. CB(1)2302/09-10 - Minutes of meeting held on 24 May 2010)

The minutes of the meeting held on 24 May 2010 were confirmed.

- II Information paper issued since last meeting**
(LC Paper No. CB(1)2086/09-10(01) - Administration's paper on midfield expansion project of Airport Authority Hong Kong

LC Paper No. CB(1)2087/09-10(01) Tables and graphs showing the import and retail prices of major oil products from May 2008 to April 2010 furnished by the Census and Statistics Department)

2. Members noted the above information papers issued since the last regular meeting.

- III Items for discussion at the next meeting**
(LC Paper No. CB(1)2301/09-10(01) - List of outstanding items for discussion

LC Paper No. CB(1)2301/09-10(02) - List of follow-up actions)

3. The Chairman advised that the Administration had not proposed any item for discussion at the next meeting on 19 July 2010. He recapped members' agreement at an earlier meeting to discuss the introduction of petrol of lower octane number by oil companies at the next meeting.

IV Competition Bill

- (LC Paper No. CB(1)2301/09-10(03) - Administration's paper on Competition Bill
- RP02/09-10 - Research report on competition policies in selected jurisdictions prepared by Research and Library Services Division of the Legislative Council Secretariat
- LC Paper No. CB(1)2276/09-10(01) - Hon Mrs Regina IP LAU Suk-yee's letter dated 15 June 2010 enclosing an article entitled "Competition Law - Why Hong Kong is Different" (English version only)
- LC Paper No. CB(1)2301/09-10(04) - Paper on the introduction of a Competition Law in Hong Kong prepared by the Legislative Council Secretariat (updated background brief)
- LC Paper No. CB(1)2301/09-10(11) - Submission from Concern Group for a Competitive Exhibition Industry in Hong Kong dated 24 June 2010 (Chinese version only)

Briefing by the Administration

4. At the invitation of the Chairman, the Secretary for Commerce and Economic Development (SCED) briefed members on the background of the introduction of a new cross-sector competition law in Hong Kong, highlighting that the legislative proposal had received wide community support during the two rounds of public consultations in 2006 and 2008. While there were concerns about the application of the Competition Bill (the Bill) to a particular sector or statutory body, she emphasized that the current deliberations should focus on the principles underpinning a cross-sector competition law. SCED said that the Bill would not apply to the Government and statutory bodies except for those statutory bodies or their activities specified by way of a regulation to be made by the Chief Executive-in-Council (CE-in-Council) after enactment of the Bill, instead of a Schedule to the Bill as originally proposed. The regulation making power would be provided for in the Bill and the subsidiary legislation would be subject to scrutiny of the Legislative Council (LegCo). The Commerce and Economic Development Bureau (CEDB) was examining, in conjunction with bureaux and departments to determine which, if any, of the some 500 statutory bodies in Hong Kong, should be made subject to the application of the Bill. Given the large

number of statutory bodies and complexity of issues involved, it was anticipated that more time would be required to complete the work. Nevertheless, she assured members that this should not affect the drafting of the Bill.

5. The Under Secretary for Commerce and Economic Development (USCED) then briefed members on the key elements of the Bill, including the scope of the new legislation, general prohibitions, institutional framework, enforcement by the Competition Commission (the Commission), remedies for contravention of a competition rule, rights of private actions, exemptions and exclusions etc, as stated in the Administration's paper (LC Paper No. CB(1)2301/09-10(03)).

Discussion

Application of the Bill to statutory bodies

6. Mr Fred LI said that the introduction of a cross-sector competition law had long been awaited for in Hong Kong. Members belonging to the Democratic Party were particularly concerned how the Administration would determine which of the 500 statutory bodies should be subject to the application of the Bill, noting that some of these bodies, such as the Hong Kong Trade Development Council (TDC), were heavily involved in economic activities and might have competed unfairly with the private sector through abuse of their market positions. He enquired about the specific criteria to be adopted in determining which of the statutory bodies should be subject to the application of the Bill.

7. Mr Paul CHAN also requested the Administration to carefully consider which statutory bodies should be subject to the application of the Bill in a fair manner. He was concerned about the Government's position as to whether those professional bodies that were statutory in nature should be subject to the application of the Bill, taking note that some professional bodies did not have statutory status.

8. In response, SCED said that the Government would study carefully whether the economic activities, if any, conducted by a statutory body would lead to direct competition with the private sector and impact on market efficiency of a particular sector. She emphasized that apart from economic consideration, the Government also considered that activities conducted by some statutory bodies had a social obligation, e.g. job creation. As for non-statutory professional bodies, they would be treated as "undertakings" and subject to the application of the Bill if they conducted economic activities. In this connection, Mr Paul CHAN highlighted the economic activities conducted by professional bodies, such as collecting membership fees and other charges for examination and certification etc.

9. Mr Ronny TONG observed that there was an increasing trend for the Government to exempt itself and the statutory bodies from the application of new legislation, such as the Race Discrimination Ordinance (Cap. 602). He queried the propriety to stipulate that the Bill would not apply to Government and statutory bodies even before the Bill was scrutinized, as this would put the Commission in a difficult position in future if the economic activities of some statutory bodies were

found to be anti-competitive. As regards the regulation to be made by CE-in-Council, Mr TONG considered that the Commission would be in a better position with the knowledge and expertise to determine which of the statutory bodies should be subject to the application of the Bill.

10. Mr Albert CHAN criticized that the Administration appeared to keep procrastinating the enactment of the competition law in the past years, and requested the Administration to expedite the process. He opined that statutory bodies should be excluded from the application of the Bill only when there were strong justifications, bearing in mind that some of these bodies, such as the Hong Kong Post, Urban Renewal Authority and TDC, were conducting commercial activities that might lessen competition.

11. SCED considered that as the regulation to specify those statutory bodies or their activities to be subject to the application of the Bill would be made by the CE-in-Council and scrutinized by LegCo, this would ensure transparency in the process. Nevertheless, the Administration would listen to more views and suggestions from members and the public in this regard.

12. Mr Ronny TONG enquired whether an economic activity would be "exempted" under the Bill if it was undertaken by a commercial party in partnership with a statutory body not subject to the application of the Bill. SCED advised that the "partner" would not be immune from the competition law by collaborating with the statutory body in question, and the conduct of the "partner" had to be considered on its own merit to see whether the economic activity involved would give rise to anti-competitive conduct. The conduct of the statutory body in question would be subject to review with regard to the application of the Bill. Mr TONG requested the Administration to spell this out clearly in the Bill.

13. Miss Tanya CHAN enquired about the timeframe for drawing up the list of statutory bodies in the regulation and the mechanism by which the list could be reviewed, for example when an aggrieved party considered that a particular statutory body should also be included in the list. In response, SCED said that the regulation to be made by CE-in-Council would be submitted to LegCo after the Bill was enacted and the regulation was subject to scrutiny by LegCo. Given the large number of statutory bodies involved and close examination was required, the Administration would study them in parallel with the scrutiny of the Bill which would be introduced to LegCo very soon. SCED highlighted the merit of adopting a phased approach to implement the new legislation to allow sufficient time for work on publicity and public education which would help the public understand the new statutory requirements.

14. Mr Andrew LEUNG pointed out that a number of the 500 statutory bodies were rendering different kinds of services to small and medium-sized enterprises (SMEs). He was concerned that subjecting some of these bodies to the application of the Bill might hamper the continued provision of these services that were fully or partially subvented by the Government. Declaring that he was the Chairman of

the Vocational Training Council, Mr LEUNG said that courses offered by the institution was a case in point. SCED assured members that the Administration would carefully examine the statutory bodies to be included in the regulation, having regard to the interests of the business sector while not compromising the legislative intent to combat anti-competitive practices.

Mergers

15. Mr Fred LI pointed out that the United States, United Kingdom, European Union and Singapore all had enacted cross-sector competition laws to, inter alia, have control on mergers. He considered that as the small size of the local market would easily give rise to merger activities leading to abuse of market power, the Bill should extend the merger rule to more sectors instead of just maintaining the existing control over mergers and acquisitions available under the Telecommunications Ordinance (Cap. 106). Miss Tanya CHAN enquired about the specific timeframe for considering whether to extend the merger control to a cross-sector regulation.

16. SCED said that the existing application of merger rule to carrier licenses granted by the Telecommunications Authority only could be traced to the earlier policy of sector-specific application of merger control. The two rounds of public consultation in 2006 and 2008 had revealed that the community at large had come to the consensus of introducing a competition law to maintain and enhance a fair and competitive business environment in Hong Kong. While the Administration considered it necessary to modernize and adjust merger control in tandem with the development of merger rule in other competition jurisdictions, it was not the aim of the new competition law to regulate market structures at this stage. In fact, it was not unusual to see high market concentration in a small market like Hong Kong, whilst some mergers had in effect brought about healthy integration and enhanced overall economic efficiency.

17. Mr CHAN Kam-lam agreed that merger control should not be imposed indiscriminately as some merger activities could bring about benefits to consumers in terms of enhanced services and/or lower transaction costs. However, given the proven effectiveness of the existing merger control over the telecommunications sector, he suggested that the Administration should take the opportunity to extend the merger rule to a couple more sectors on a trial basis, with a view to enhancing fair market competition and consumer welfare.

18. SCED referred to the report of the Competition Policy Review Committee which recommended that the competition law should aim to sanction anti-competitive conduct but not to intervene in market structures by targeting mergers and acquisitions. Taking on board this view, it was considered prudent at this stage to maintain the existing control over mergers and acquisitions available under the Telecommunications Ordinance. Nonetheless, the Administration did not rule out the possibility of adjusting the merger control to other sectors after a review in future. Moreover, given the complexity of and time constraint in assessing merger activities, it would pose a significant challenge to the

Commission if it had to shoulder such onerous burden at the outset of the implementation of the new law.

Competition Commission

19. Mr Ronny TONG noted that the Commission would consist of not less than five members (including the Chairperson) appointed by the CE. To attain transparency and credibility, he considered it important to make public the criteria for making the appointments, which should include avoiding actual or potential conflict of interests, in particular if the appointee(s) came from the business sectors. SCED assured members that CE would identify persons of integrity with credibility well recognized in the society, and well-versed in the operation of the business sectors to undertake the Commission's responsibilities. In reply to Mr Ronny TONG's further enquiry, SCED said that as it was the existing practice for appointees to statutory or advisory bodies to declare their interests where appropriate, the Administration did not see the need to create specific provision in the Bill for this long-established practice.

20. SCED supplemented that in addition to the power of deciding whether an agreement or conduct should be excluded or exempted from the conduct rules in accordance with criteria prescribed in the Bill, the Commission could also investigate and bring proceedings before the Tribunal in respect of anti-competitive conduct on receipt of complaints, on its own initiative, or on referral from the Government or a court. To facilitate enforcement and public understanding of the competition law, the Commission would be required by law to draw up regulatory guidelines on the interpretation and implementation of conduct rules in future.

Exemptions and exclusions

21. Miss Tanya CHAN noted that the Commission would be empowered to decide, in response to an application, as to whether or not an agreement or conduct should be excluded or exempted from the conduct rules in accordance with the prescribed criteria. She enquired about the party that could make the application and why the Commission was empowered to make these decisions. In response, SCED advised that any undertaking could apply to the Commission. She added that the Commission, being the enforcement agency with the power and experience of investigation, would be best placed to make these decisions.

Private actions and SMEs

22. Mr CHAN Kam-lam appreciated that fair market competition was vital to the economy. While introducing a competition law would be conducive to this purpose, there was concern how the new legislation could strike a balance between consumer protection and the operation of SMEs which had a relatively small market share.

23. Mr Andrew LEUNG urged the Administration to remain mindful that the new legislation should not create additional compliance burden for SMEs which

had made up the majority of local business establishments. Referring to overseas experiences, he conveyed the concerns of some SMEs that the provision for private actions under the competition law might leave them vulnerable to aggressive and costly litigations from large firms. He was very concerned how the Administration would allay these worries. Mr WONG Ting-kwong shared that while SMEs generally welcomed the proposed competition law to combat anti-competitive conduct, they feared that large companies might use litigation as a strategic tool to harass them.

24. SCED said that individual SMEs, due to their small market share, would less likely be able to substantially lessen competition in a market when compared with large enterprises. Nevertheless, the Administration was fully aware of the concerns of the business sector, especially SMEs, about the compliance cost for the competition law. To allay their worries, the Commission would be empowered with the discretion not to pursue cases of frivolous or vexatious nature. The Administration would also consider appointing representative of SMEs to the Commission. Where legal proceedings had to be instituted, the Tribunal would conduct them with as much informality as was consistent with attaining justice and at a lower cost to all parties involved.

25. The Chairman was worried that given the small size of the Hong Kong market, an economic activity involving novel and unique products would be seen as monopolizing the market if no similar products were available in the local market. SCED stressed that it was the Government's policy to encourage innovation and creativity in individual sectors, and protect intellectual property. She assured members that the uniqueness and novelty of a product would not by itself be construed as a contravention of the Bill.

Remedies

26. Mr WONG Ting-kwong noted that the Tribunal would be empowered to apply a full range of remedies for contravention of a competition rule. These included pecuniary penalties not exceeding 10% of the turnover of the undertaking(s) in breach of the competition rule for the year in which the contravention occurred, award of damages to aggrieved parties, etc. He enquired how the Tribunal would determine the type(s) of remedies to be taken, and whether imprisonment would be imposed for non-compliance. SCED advised that the Bill would provide for a two-tier commitment mechanism under which the Commission would be empowered to, inter alia, issue an infringement notice after its investigation and before bringing proceedings to the Tribunal, to a person allegedly contravening or having contravened the conduct rule, requiring the person to pay a sum to the Government and/or take or refrain from taking certain action to address the Commission's concerns in exchange for the Commission's commitment to cease investigation and/or not to institute or continue with proceedings against the person. USCED added that the Commission would not institute or continue with proceedings for a pecuniary penalty in respect of a contravention of a conduct rule against those with which it had reached leniency agreements. While the Commission could only initiate civil proceedings within its jurisdiction,

non-compliance with the Commission's investigative power in the absence of reasonable excuse would be subject to criminal penalties. As for the application of remedy, it would depend on the circumstances and facts of each case. Generally speaking, pecuniary penalties would be imposed in the more serious cases, which would be capped at 10% of the turnover of the undertakings for each year in which the contravention occurred, and the Tribunal could only impose pecuniary penalty on application by the Commission.

27. Mr Albert CHAN opined that as the leniency agreements reached between the Commission and the persons who had allegedly contravened conduct rules should apply to the Commission's jurisdiction only, these agreements should not pre-empt other enforcement agencies from initiating legal proceedings against the person. SCED reiterated that the remedies for contravention of a competition rule would include pecuniary penalties imposed by the Tribunal. If the person concerned did not comply with the Commission's investigative power, he/she would be subject to criminal penalties provided in the proposed competition law.

28. Mr CHAN Kam-lam enquired about the application of the Bill to extra-territorial economic activities conducted by a company registered in Hong Kong if these activities had the effect of lessening competition in the Hong Kong market. SCED advised that under the current proposal, the Bill would also apply to a conduct outside Hong Kong if it had as its object or effect the prevention, restriction or distortion of competition in Hong Kong. In this connection, she pointed out that the proposed pecuniary penalties not exceeding 10% of the turnover of the undertaking(s) in breach of the competition rule for each year in which the contravention occurred would include the global turnover of the undertaking(s). The Administration would further gauge views during the scrutiny of the Bill on how this could be implemented without interfering with the normal operations of Hong Kong companies.

Conclusion

29. In conclusion, the Chairman recapped members' views and suggestions about the application of the Bill to statutory bodies, the appointment of members to the Commission, exemptions and exclusions, prohibitions against mergers or acquisitions as well as SMEs' concerns about the compliance burden arising from the new legislation. The Chairman requested the Administration to take note of these concerns in drafting the Bill.

V Framework Agreement on Hong Kong/Guangdong Co-operation

(LC Paper No. CB(1)1559/09-10(01) - Administration's information paper on Framework Agreement on Hong Kong/Guangdong Co-operation

- LC Paper No. FS22/09-10 - Fact sheet on the current development of Framework Agreement on Hong Kong/Guangdong Co-operation prepared by the Research and Library Services Division of the Legislative Council Secretariat (Chinese version only))

(a) Tourism co-operation

- (LC Paper No. CB(1)2301/09-10(05) - Administration's paper on Framework Agreement on Hong Kong/Guangdong Co-operation – Tourism co-operation

- LC Paper No. CB(1)2301/09-10(06) - Paper on Framework Agreement on Hong Kong/Guangdong Co-operation – Tourism co-operation prepared by the Legislative Council Secretariat (background brief))

Briefing by the Administration

30. At the invitation of the Chairman, the Commissioner for Tourism (C for Tourism) briefed members on the contents and latest developments of tourism cooperation under the Framework Agreement on Hong Kong/Guangdong Cooperation (the Framework Agreement) in respect of joint promotion, facilitation measures for Mainland residents to visit Hong Kong and market regulation, as stated in the Administration's paper (LC Paper No. CB(1)2301/09-10(05)). He highlighted that of the 17.96 million Mainland visitor arrivals in Hong Kong in 2009, 76.3% came from the Guangdong Province, which reflected the increasingly important role of the Guangdong Province in the development of tourism between Hong Kong and Mainland.

Presentation by the Hong Kong Tourism Board

31. Mr Anthony LAU, Executive Director of Hong Kong Tourism Board (HKTB) further briefed members on the tourism co-operation between HKTB and Guangdong tourism authorities. In particular, both sides would continue to develop "multi-destination" itineraries to encourage visits to the two places. Mr LAU highlighted that the tourism promotion agencies of Guangdong and Hong Kong had been conducting joint promotion in various long-haul and short-haul markets through participation in travel exhibitions (e.g. JATA World Tourism Congress and Travel Fair) and road shows. For example, HKTB and the

Guangdong Provincial Tourism Administration launched road shows in North America in April 2010. Following the recent joint promotional campaigns in London and Paris in June 2010, more joint promotions with Mainland tourism bureaux would be launched in other markets, such as Australia and South East Asia in the latter part of 2010. Leveraging on various major events, such as the Chinese and Ethnic Chinese Tourism Year, the Guangzhou Asian Games and World Tourism Day, HKTB would collaborate with Guangdong on promotions, and design new itineraries, some of which would carry special themes, such as Maritime Silk Road. On cruise tourism, Mr LAU said that HKTB had liaised with the coastal provinces and cities, including the Guangdong Province, to develop cruise itineraries in South China and promote them to the international cruise liners. Recently, HKTB and the China National Tourism Administration had, for the first time, jointly organized a seminar on cruise tourism for the tourism workforce. With the implementation of various entry facilitation measures for Shenzhen residents, HKTB would continue to co-operate with the Shenzhen travel trade and media to promote the tourism products in Hong Kong to the employees of large corporations, who had high spending power, especially during special occasions, such as golden weeks and Women's Day. He assured members that HKTB would continue to strengthen cooperation with the Guangdong Province in taking forward more initiatives for tourism development in the region.

Discussion

Facilitation measures and marketing

32. Mr CHAN Kam-lam said that in view of the growing importance of tourism to the Hong Kong economy, the Administration should ride on the Framework Agreement to explore more visa facilitation measures with the Guangdong Province to promote tourism development in the region. He noted that two pilot measures had been implemented to allow Shenzhen permanent residents to apply for one-year multiple-entry Individual Visit (IV) endorsements to visit Hong Kong, and to allow eligible non-Guangdong permanent residents ordinarily living in Shenzhen to apply for IV endorsements in Shenzhen to visit Hong Kong. He urged the Administration to seek approval from the Central authorities to extend these facilitation measures to the entire Guangdong Province, as well as the Fukien Province and other major cities in the Mainland. C for Tourism said that the Administration had been working towards this direction. He informed members that by 31 May 2010, more than 2.94 million Shenzhen residents had visited Hong Kong using the one-year multiple IV endorsement since its implementation on 1 April 2009. The Administration would closely liaise with the Central authorities on the possibility to extend the measures to other parts of the Guangdong Province. Mr CHAN pointed out that as Mainland was the largest source market to Hong Kong tourism, the Government and HKTB should allocate more marketing resources for the Mainland. C for Tourism referred to the ongoing joint promotions by HKTB and the tourism promotion agencies of Guangdong, and assured members that the two places would continue to step up cooperation in this regard.

33. Mr CHAN Kam-lam observed that while the number of Mainland visitors to Hong Kong had increased by many folds since 1997, the number of hotel rooms had only increased from about 40 000 to over 60 000 in the same period. He considered that more hotel accommodation facilities should be provided to meet the growing demand, with a view to boosting overnight visitors and hence their local consumption. C for Tourism said that it was the Administration's goal to attract visitors to stay longer in Hong Kong so as to generate more spending. Providing adequate and quality hotel rooms would be essential to help achieve this goal. To this end, the Government would continue to identify and secure suitable land for hotel development, and encourage interested enterprises to take forward related projects. It was envisaged that the number of hotels would increase to over 220 in the few years ahead to cater for the keen demand.

Cross-boundary infrastructures

34. Mr Albert CHAN criticized that the Administration had not taken heed of his repeated urge to improve the design of boundary control points (BCPs) and their accessibility. It was after the veto of the Legislative Council of the funding application for Lok Ma Chau BCP in the earlier year that the Government had modified part of the design. However, for major cross-boundary facilities at Lo Wu and the Shenzhen Bay Port, private cars were not allowed to cross the boundary which was only accessible by means of railways or certain special vehicles. He considered it unacceptable that security policy and interests of public transport operators should override the importance of opening up the boundary and the associated economic development. In his view, the current situation had reflected the lack of coordination among the relevant bureaux and departments to put in a place a more coherent policy for BCPs. The Chairman enquired about the measures to improve the connectivity of BCPs with regard to the flow of individual visitors.

35. C for Tourism responded that the Administration had been enhancing the provision of cross-boundary facilities to tie in with the closer cooperation between Hong Kong and the Mainland, such as those being planned for the Hong Kong-Zhuhai-Macao Bridge (HZMB) and the Guangzhou-Shenzhen-Hong Kong Express Rail Link. He further said that development of individual BCPs hinged largely on their respective geographical location and design capacity. Where appropriate, the Administration would implement suitable measures to enhance their patronage. For instance, ad hoc quotas for cross-boundary private cars would be introduced at HZMB to broaden the availability and flexibility of travel for these cars. Mr Albert CHAN maintained his view that the Administration had failed to adopt a more flexible and passenger-oriented approach in developing BCPs, which had rendered these costly facilities under-utilized. The Chairman requested the Tourism Commission to convey these concerns to the relevant bureaux and departments. The Administration took note of the request.

Market regulation

36. Mr CHAN Kam-lam said that while the Framework Agreement would

facilitate further development of tourism in Hong Kong and the Guangdong Province, the Administration should continue to strengthen the regulatory mechanism for the travel trades and combat market malpractices with a view to preserving the Hong Kong tourism brand. C for Tourism assured members that Hong Kong would continue to work closely with the Guangdong Province to promote quality Hong Kong tours while maintaining market order.

(b) Logistics development

(LC Paper No. CB(1)2301/09-10(07) - Administration's paper on Framework Agreement on Hong Kong/Guangdong Co-operation – Logistics development

LC Paper No. CB(1)2301/09-10(08) - Paper on Framework Agreement on Hong Kong/Guangdong Co-operation – Logistics development prepared by the Legislative Council Secretariat (background brief))

Briefing by the Administration

37. At the invitation of the Chairman, the Acting Secretary for Transport and Housing (Atg STH) briefed members on policies/measures related to logistics development under the Framework Agreement, including communication and coordination, connectivity and customs facilitation, as stated in the Administration's paper (LC Paper No. CB(1)2301/09-10(07)). He said that the fast-growing economy of the Mainland, which had stimulated internal consumption and market expansion in the area, had given rise to new business opportunities in the Mainland for the logistics sector. In fact, the transport and logistics trade was the sector under which the largest share of Certificate of Hong Kong Service Suppliers for the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) had been issued. Up to May 2010, about 41% or 566 of these approved certificates came under the said trade, reflecting the benefits brought about by CEPA to assist the industry in tapping the Mainland market. Atg STH believed that the Framework Agreement would be conducive to bringing about a better macro environment for Hong Kong/Guangdong cooperation by capitalizing on the strengths of both sides.

Discussion

Logistics development

38. Mr CHAN Kam-lam observed that although there had been improvements in the cross-boundary major infrastructure facilities, facilitation of cargo flow and

customs clearance in Hong Kong over the past years, other ports in the Pearl River Delta (PRD) Region (e.g. Yantian) were posing keen competition to Hong Kong with their competitive advantage in cost. He considered that the Government should take forward more initiatives to help reduce trucking costs, so as to attract more cargo flow to Hong Kong. While he believed that the Framework Agreement would give impetus to the development of the Hong Kong Port (HKP), it was essential to put in place complementary policies and concrete measures conducive to such development. For instance, the Government should build on Hong Kong's edge to develop a logistics park to keep up with similar developments in Shenzhen. The Chairman also expressed concern about the trucking cost differential between HKP and other ports in the PRD Region.

39. Atg STH said that the Government had pressed ahead with a number of major infrastructural projects in recent years to improve the hardware for the development of the logistics industry. To illustrate, the Hong Kong-Zhuhai-Macao Bridge (HZMB) would extend Hong Kong's cargo hinterland to western PRD, whereas the Liantang/Heung Yuen Wai Boundary Control Point (BCP) would strategically facilitate the flow of goods on the eastern part of the PRD Region. Separately, the Administration would release in phases suitable sites around the Kwai Tsing area for the development of a logistics cluster to anchor high value-added professional third party logistics and regional distribution services which Hong Kong had an edge in the region. This would include a site area of about 2.4 hectares at Tsing Yi to be released in September 2010.

40. Mr WONG Ting-kwong enquired about the Administration's plan to exploit the benefits brought about by the commissioning of HZMB for logistics development between Hong Kong and western PRD. Atg STH advised that the function of HZMB was to meet the demand of passenger and freight land transport among Hong Kong, the Mainland and Macao. The bridge would improve cross-boundary land connectivity between western PRD and Hong Kong, thereby reducing the transportation time between Zhuhai and HKP and HKIA by about 60% and 80% respectively.

Hong Kong International Airport

41. Mr CHAN Kam-lam expressed concern about the handling capacity of the Hong Kong International Airport (HKIA). He considered that the Administration should be mindful of the rapid development of the new airport in Guangzhou which was connected to extensive railway and highway networks, and the threat posed by it to HKIA as another core aviation hub in South China in the coming decade. Atg STH assured members that the Administration was not complacent and was aware of the intensifying competition in the region. He advised that Hong Kong would, through air service agreements (ASAs) with its aviation partners, strengthen its position as an international aviation hub. Moreover, the Framework Agreement had clearly defined the roles and functions of HKIA and other PRD airports. HKIA, with its extensive international network, would continue to play the role as an international aviation centre, whereas the Guangzhou Baiyun International Airport would be positioned as a gateway aviation hub of the

Mainland. In addition, the Civil Aviation Department would continue to liaise with the relevant aviation authorities of the Mainland, with a view to improving the use of airspace and coordination of air traffic management in the PRD Region.

42. Mr Albert CHAN recalled that in 1990s, he had already cautioned the then Administration that the leading position of HKP might be overtaken sooner or later by the Mainland counterparts as the latter had been developing vigorously in various aspects, but the then Administration had not taken on board his concern and believed that HKP could continue to excel and maintain its current position. Today, HKP was losing its edge, registering a dropping trend in cargo throughput. Mr CHAN cautioned that the same might happen to HKIA as there could be a policy change anytime in the Mainland whereby the aviation authorities in the PRD Region could also sign ASAs freely with overseas counterparts. He was of the view that the Framework Agreement mainly aimed at strengthening the development of the PRD cities in the Mainland whereas Hong Kong could only reap its residual benefits.

43. Taking note of the member's concern, Atg STH advised that to maintain HKIA's position as an international and regional aviation centre in the longer term, the Airport Authority Hong Kong (AA) had commissioned the HKIA Master Plan 2030 Study, with a view to ensuring that HKIA would continue to meet the growing demand for aviation services in terms of both cargo and passenger flow. To cope with air traffic demand up to 2020, AA was taking forward the midfield expansion project of HKIA to provide additional aircraft stands and apron facilities, which would increase the annual handling capacity of the airport to 70 million passengers and six million tonnes of cargo.

44. Mr CHAN Kam-lam was concerned that the roles and functions of HKIA and other airports in the PRD Region could be re-defined after the Framework Agreement lapsed in 2020. As such, the Government should strive to upgrade HKIA's competitive edge, while taking forward the initiatives under the Framework Agreement. Sharing similar concerns, Mr IP Wai-ming considered that other airports in the PRD Region would be developed at a much faster pace than HKIA under the Framework Agreement. As such, he urged the Government to undertake more complementary measures to maintain the advantageous position of HKIA. Atg STH took note of members' concerns. He assured members that the Administration had not underestimated the global and regional competition faced by HKIA and would continue to strengthen HKIA's role as an international aviation centre. He also pointed out that unlike port development which was primarily private-led, the developments of HKIA and PRD airports were mainly led by the respective governments.

45. The Chairman urged the Government to proactively take forward a third runway for HKIA, and allow adequate time for conducting public consultation and resolving objections, if any, so as to avoid delay in the overall implementation. Atg STH said that the Administration recognized the importance of building a new runway in the long run, the feasibility of which was being studied in the HKIA Master Plan 2030 Study. The Administration would brief the Panel after the

completion of the Study in late 2010.

Shenzhen-Hong Kong Western Express Line

46. Mr Albert CHAN urged the Government to expedite the planning regarding implementation of the Shenzhen-Hong Kong Western Express Line (WEL) to connect HKIA and the Shenzhen Airport, and emphasized the need to conduct thorough consultation for the project so as to ensure smooth implementation and public acceptability.

47. Atg STH said that Hong Kong and Shenzhen had already signed a cooperation agreement on advancing the WEL project. He added that apart from connecting HKIA and the Shenzhen Airport, the latest concept included whether WEL could also serve Qianhai.

Customs facilitation

48. Mr CHAN Kam-lam stressed the importance of quick and convenient cross-boundary clearance for the movement of goods. He also suggested the Administration consider providing round-the-clock customs clearance services at more BCPs, such as Man Kam To BCP, in addition to the Lok Ma Chau (LMC) BCP to bring more convenience to BCP users. Atg STH said that the Administration appreciated the need to enhance the competitive edge of Hong Kong in terms of customs facilitation. In this connection, Hong Kong and Guangdong would study and innovate cross-boundary clearance mode utilizing the latest technologies at BCPs, with a view to expediting the clearance process. One such initiative was to align the format of common data fields required by the customs of both sides for road cargo to bring greater convenience to the logistics industry. Atg STH said that the Administration would consider the suggestion of providing round-the-clock customs clearance services at more BCPs, taking into account the handling capacity of respective BCPs, additional capacity provided by the new BCPs, as well as the views of the Mainland authorities, etc.

49. The Chairman pointed out the need to maintain a strong backup network at BCPs to avoid delay in the clearance process due to system failure. Atg STH said that the Administration would take remedial action immediately in case of system breakdown, and identify the problems for making improvements.

50. The Head of Land Boundary Command, Customs and Excise Department (H of LBC, C&ED) said that the Administration attached great importance to ensuring a reliable and smooth operation of the computer system for customs clearance, and had been keeping abreast with global developments in moving towards electronic customs clearance. On 29 March 2010, the Road Cargo System (ROCARS) was put to trial implementation to provide a seamless system for the movement and customs clearance of road cargoes, under monitoring by a dedicated team of C&ED staff. The system would enable the industry stakeholders to submit electronic cargo information to C&ED in advance for adequate risk profiling of road cargoes. In reply to Mr WONG Ting-kwong's

enquiry about the improvements in the efficiency of customs clearance using ROCARS, H of LBC, C&ED advised that following the trial period, ROCARS had commenced operation from 17 May 2010. It was observed that the system had operated smoothly, some minor calibration of which was required to facilitate identification of car plate numbers etc. Compared to manual customs clearance, ROCARS had shortened the clearance time from more than one minute to less than one.

51. Mr CHAN Kam-lam conveyed the concerns from some logistics companies about the current restrictions prohibiting Mainland container truck drivers to come and work in Hong Kong, which had caused inconvenience to the industry's operation. The Chairman pointed out that this problem would affect the operating costs of the logistics sector. Atg STH said that the Administration took note of the view but the matter would require careful consideration having regard to the impact on local employment. The Administration would continue to explore measures conducive to enhancing efficiency in customs clearance to help reduce trucking costs.

Conclusion

52. The Chairman concluded that members had raised concerns about the operation and development of BCPs and its services, in particular with regard to electronic customs clearance. Members were also keen to ensure that the handling capacity and railway connectivity of HKIA would be enhanced in tandem with developments of the logistics and the economy at large.

VI Regulation of inbound travel trades

(LC Paper No. CB(1)2301/09-10(09) - Administration's paper on regulation of inbound travel trades

LC Paper No. CB(1)2301/09-10(10) - Paper on regulation of inbound travel trades prepared by the Legislative Council Secretariat (background brief))

Briefing by the Administration

53. The Commissioner for Tourism (C for Tourism) said that the Tourism Commission (TC) and the Travel Industry Council of Hong Kong (TIC) had all along been closely monitoring the arrangements for receiving Mainland tour groups. The Government and TIC were deeply concerned about the unfortunate death of a member of a tour group from Hunan in Hong Kong, when the group was staying at a TIC registered shop on 22 May 2010. Measures were adopted after the incident to further strengthen regulation against adverse market behaviour, including immediate follow-up actions, short-term measures to tighten regulation of travel agents, tourist guides and registered shops, as well as cooperation with the

Mainland authorities to combat malpractices, as detailed in the Administration's paper (LC Paper No. CB(1)2301/09-10(09)). C for Tourism said that after investigation, TIC considered that the travel agent concerned (i.e. Win's Travel Agency Limited (WTA Ltd)) in the incident had violated TIC's code and directives and TIC decided to terminate its membership, which was the most severe sanction that TIC had ever imposed on travel agent's malpractice. Separately, the Registrar of Travel Agents (RTA) had initiated an investigation to determine whether the travel agent in question had carried on the business as a travel agent contrary to the public interest under section 21 of the Travel Agents Ordinance (Cap. 218) (TAO). TIC had also established a task force to review comprehensively the operation of inbound Mainland tour groups, and to draw up long-term proposals for improvements within three months. In response to TC's request, the Shenzhen Municipal Bureau of Culture, Sports and Tourism (SZMB) agreed to step up undercover inspections in joint efforts with Hong Kong. He emphasized that the Government and TIC would not allow the unscrupulous practices of a few to tarnish the reputation of Hong Kong, and would take strict enforcement actions to combat the malpractices to protect the rights of visitors to Hong Kong.

Discussion

54. The Chairman declared that he was a shareholder and non-executive director of a travel agency. Mr Paul TSE also declared that he was a shareholder of a travel agency, and he had received request from WTA Ltd for assistance to help ensure justice in the investigation process.

Industry self-regulation

55. Mr Fred LI opined that the incident reflected again the problems in the industry self-regulatory regime, given that TIC was only a trade association but was conferred with the power to regulate the travel trades. In the incident concerned, the Hunan visitors paid only \$2,000 for a four-day package tour to Hong Kong, and most of the fees were already pocketed by the Mainland designated agent (DA) in Hunan and the travel agent in Shenzhen to which the tour was outsourced. The fee that local licensed travel agents in Hong Kong could receive for providing reception service would thus be quite small and the expenses could only be met by other sources of income such as shopping commissions. He observed that while there were 60 shops listed under TIC's Demerit System as "registered shops", most of the purchases concentrated in just some 20 of them involving tens of billion dollars of business each year. Mr LI was concerned whether TIC had monitored travel agents whose directors or shareholders were associated with these shops as they might arrange tour groups to visit these shops for designated shopping and reap profits. He noted that as many as 24 consumer complaints had been lodged against WTA Ltd in the past, and it had violated TIC's codes and directives for eight times. He was disappointed that while the Government professed to rectify market malpractices stemming from "zero-fare tours" after some Mainland inbound tour groups had lodged complaints in 2006, the malpractices had not been clamped down at root. As such, he urged the Government and TIC to tighten regulation to genuinely combat "zero/negative-fare tours".

56. C for Tourism said that improvements had been made to the two-tier regulatory regime for travel agents (i.e. co-regulation by the Travel Agents Registry (TAR) and TIC) over the years to cater for changes in the industry. The Government was considering legislative amendments to TAO to make clear TIC's role under the regulatory regime. In addition to regulatory and related efforts in Hong Kong, TC had also maintained regular dialogue with its Mainland counterparts on promoting honesty and quality tourism, in particular to combat "zero/negative-fare" tours. In May 2009, the Mainland implemented the Regulation on Travel Agents which, inter alia, stipulated that if a travel agent requested another travel agent to provide service, it had to pay the other agent a fee not less than the cost of the reception service. SZMB would take action against the Mainland travel agent concerned if it had violated the relevant regulation. C for Tourism stressed that the existing regulatory mechanism had been operating effectively in general but the Government and TIC would remain vigilant to signs of malpractices in the travel industry, and continue to refine the system where warranted.

57. Mr WONG Ting-kwong said that in spite of the Government's efforts to promote honest and quality tourism, the problem arising from "zero/negative-fare tours" still persisted. While WTA Ltd in the incident in question would be sanctioned by termination of its TIC membership, Mr WONG was concerned about the mechanism in place to prevent its directors or shareholders from continuing the operation of the travel agent in disguise of a new company name and registration. C for Tourism advised that under TAO, TIC membership was a prerequisite for application or renewal of a travel agent's licence in Hong Kong. According to the Memorandum and Articles of Association of the TIC Board, TIC might consider whether the controllers, directors, principal shareholders in the management of its travel-related and tourism business were fit and proper persons, including whether the person in question had been convicted of an offence against the TAO provisions. RTA would also give regard to similar factors in granting or renewing a travel agent's licence. As the case of WTA Ltd was now being investigated, he could not give further comments at this juncture.

58. Mr IP Wai-ming criticized that while tourism was one of the four economic pillars in Hong Kong, it appeared to him that the Government had not implemented effective measures to combat malpractices in the travel trades despite the subject matter had been discussed time and again at the Panel meetings. He considered it futile to address the problem by specifying TIC's role more clearly in TAO, as the crust of the problem laid on the effectiveness of self-regulation and not the clarity of TIC's role. He also found it unreasonable that a travel agent had to join one of the TIC's eight Association Members prior to joining TIC. Mr IP urged the Government to duly review whether it should take up a more proactive role in regulating the travel agents instead of just relying on the industry self-regulation mechanism. He suggested the Panel discuss related issues in the near future. The Chairman advised that review of the operation of TIC had already been put on the Panel's list of outstanding items for discussion.

59. C for Tourism said that the Government fully appreciated the economic contribution of tourism to the economy, and it had been playing a proactive role in the regulation of travel agents. The role of TIC had evolved over the years to become more than a trade association, with established network in the travel trades and the expertise to formulate regulatory measures. The composition of TIC had included independent non-trade directors appointed by SCED to help ensure its impartiality, who were serving as the convenors of TIC's committees relating to compliance, handling of complaints and disciplinary actions, in which non-trade members took up the majority of the seats. TAR, the licensing authority who also conducted financial surveillance on travel agents under TAO, might consider revoking a travel agent's licence having regard to the status of the travel agent's TIC membership.

60. Mr Paul TSE considered that the recent series of incidents had pointed to the need for a more thorough review of the self-regulatory mechanism for the travel industry, instead of minor and hasty rectifications in a piecemeal manner. He criticized that TIC used to adopt punitive measures to regulate travel agents, and impose heavier sanctions following each incident. It would not help improve the overall regulation by sanctioning individual travel agent concerned each time after a widely-reported incident had occurred. In his view, TIC should exercise more professionalism to put in place, in joint efforts with the China National Tourism Administration, preventive measures to deter non-compliance. C for Tourism stressed that the TIC task force would take into account members' views and suggestions in formulating medium to long-term measures to strengthen the regulation of the travel industry.

61. The Chairman conveyed the concerns from the travel industry that it was difficult to regulate the small and medium-sized travel agents. Mr Michael WU, Chairman of TIC said that TIC would continue to communicate with member travel agents with a view to further improving the regulatory regime, having regard to the views and advice of the Government. For instance, he and TIC's Executive Director had been meeting with member travel agents in groups since May 2010 to listen to their views and suggestions on possible assistance measures to facilitate a better operation of their business. C for Tourism added that the Government would continue to work closely with TIC and gauge the Panel's views to refine the regulatory regime in tandem with the development of the travel industry.

Refund Protection Scheme and Demerit System

62. Mr CHAN Kam-lam observed that the recurrence of adverse market behaviour in the travel trades had undermined the public's confidence in the industry self-regulation regime. He considered that the Government should discuss with the travel industry how to prevent the malpractices from happening again. He enquired about the number of cases seeking refund under the six-month full refund protection scheme since its introduction in 2007, and the statistics of demerit points that had been given to individual shops for non-compliance of relevant requirements.

63. C for Tourism said that the full refund protection scheme was part of the series of measures launched in 2007 to combat the unscrupulous practices of some inbound travel agents and shops forcing Mainland group tour participants to make purchases. Shopping-related complaints had dropped in the 12 months immediately after the scheme was implemented. Nevertheless, the Government would remain vigilant to market malpractices in the travel trades and strengthen the regulatory measures where appropriate. Mr Joseph TUNG, Executive Director of TIC added that the number of shopping-related complaints had increased in 2008 to 2010, probably due to increased publicity and awareness of the scheme. However, most of the cases were settled with full refund for the purchases concerned. As the registered shops could honour the scheme to offer full refund, none of them had been given demerit points so far.

64. Mr CHAN Kam-lam expressed concern that it appeared that the unscrupulous shops could get off penalties easily with refund, and some visitors, due to time constraints, might not bother to seek refund and leave Hong Kong. He considered it more important to tighten the Demerit System to achieve greater deterrence, especially among those registered shops frequently complained by visitors.

65. Mr Joseph TUNG of TIC responded that complainants of shopping-related cases were largely concerned whether they could obtain refund if they were dissatisfied with the purchased items. In fact, many visitors had requested for refund of purchases made in Hong Kong after they had returned to their home places, and TIC would follow up on these requests. He informed members that the TIC Committee on Shopping-related Practices would examine whether and how the Demerit System should be tightened to bring sufficient deterrence among the registered shops.

Tourist guides

66. The Chairman enquired about the means for tour participants to verify the validity of tourist guide pass (TGP) to prevent identity theft. Mr Michael WU of TIC advised that TGP had stored digitalized information of the holder's identity, including his/her photo, which could be read by scanning the passes through a portable device.

67. Mr Fred LI conveyed concerns from some local tourist guides about TIC's inaction to the prevalence of illegal tourist guides in the travel trade. In this connection, he noted that two cases of WTA Ltd's previous infringements involved the assignment of tourist guides who did not hold a valid TGP. Mr IP Wai-ming also expressed concern that the interests of tourist guides were not adequately protected. The malpractices of hiring illegal workers and requiring tourist guides to advance large amount of payment still persisted.

68. Mr Michael WU of TIC said that TIC had urged the tourist guides unions to report cases of illegal workers for it to follow up. TIC had also issued directives in 2007 stipulating that travel agents should make payment of remuneration to the

tourist guides who had advanced payment for reception services to tour groups. The TIC task force would further look into the measures to help tourist guides not to rely on a high rate of shopping commissions as their major source of income. C for Tourism said that the Government was aware of the difficulties of the tourist guides' work. Following the incident in question, TIC was discussing with the tourist guides unions how to rectify the existing practices.

69. Mr Paul TSE observed that while a representative from the Hong Kong Federation of Trade Union had been appointed as an independent director of TIC Board, he considered that it would better represent the front-line workers' interests if the appointee was from the travel industry. The Administration took note of the suggestion.

Conclusion

70. In conclusion, the Chairman recapped members' concerns about the measures to strengthen regulation of travel agents following the incident, in particular to combat hiring of illegal tourist guides. He requested the Government to take into account members' views and suggestions to improve the regulatory mechanism to prevent recurrence of similar incidents in future.

VII Any other business

71. There being no other business, the meeting ended at 12:54 pm.