

OFFICIAL RECORD OF PROCEEDINGS

Friday, 8 June 2012

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, S.B.S., S.B.ST.J., J.P.

THE HONOURABLE LEE CHEUK-YAN

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.M., G.B.S., J.P.

THE HONOURABLE FRED LI WAH-MING, S.B.S., J.P.

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, G.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE WONG YUNG-KAN, S.B.S., J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE LAU WONG-FAT, G.B.M., G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

THE HONOURABLE ABRAHAM SHEK LAI-HIM, S.B.S., J.P.

THE HONOURABLE LI FUNG-YING, S.B.S., J.P.

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

DR THE HONOURABLE JOSEPH LEE KOK-LONG, S.B.S., J.P.

THE HONOURABLE JEFFREY LAM KIN-FUNG, G.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, G.B.S., J.P.

THE HONOURABLE CHEUNG HOK-MING, G.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, B.B.S., J.P.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CHIM PUI-CHUNG

PROF THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING, J.P.

DR THE HONOURABLE LAM TAI-FAI, B.B.S., J.P.

THE HONOURABLE CHAN HAK-KAN

THE HONOURABLE PAUL CHAN MO-PO, M.H., J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN, J.P.

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

THE HONOURABLE WONG KWOK-KIN, B.B.S.

THE HONOURABLE IP WAI-MING, M.H.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN, J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBERS ABSENT:

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE TIMOTHY FOK TSUN-TING, G.B.S., J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, S.B.S., J.P.

THE HONOURABLE VINCENT FANG KANG, S.B.S., J.P.

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE LEUNG KA-LAU

DR THE HONOURABLE SAMSON TAM WAI-HO, J.P.

PUBLIC OFFICER ATTENDING:

THE HONOURABLE GREGORY SO KAM-LEUNG, J.P.
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

CLERKS IN ATTENDANCE:

MR ANDY LAU KWOK-CHEONG, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

BILLS**Committee Stage**

CHAIRMAN (in Cantonese): Good morning. Meeting now resumes. Committee now continues to consider the various amendments proposed by the Administration.

COMPETITION BILL

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I will invite the Secretary to speak again.

(The Secretary for Commerce and Economic Development indicated that he did not wish to speak again)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Commerce and Economic Development for clauses 10, 25, 29 and 77 be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of Members present. I declare the amendments passed.

CLERK (in Cantonese): Clauses 10, 25, 29 and 77 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses 10, 25, 29 and 77 as amended do stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment to clause 91 moved by the Secretary for Commerce and Economic Development be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

MR ALBERT CHAN (in Cantonese): Chairman, I request a headcount.

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members to the Chamber.

(After the summoning bell had rung, many Members returned to the Chamber)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CLERK (in Cantonese): Clause 91 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 91 as amended stand part of the Bill.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Mr TAM

Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mr LEUNG Kwok-hung and Mr Albert CHAN voted against the motion.

Mrs Regina IP abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 38 Members present, 34 were in favour of the motion, two against it and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Commerce and Economic Development to clauses 104 and 106, and the deletion of Part 7, Division 3 (that is, clauses 111, 112 and 113) be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes, if there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Dr David LI, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Alan LEONG and Miss Tanya CHAN voted for the amendments.

Mr Frederick FUNG voted against the amendments.

Mr CHIM Pui-chung, Mrs Regina IP, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 41 Members present, 34 were in favour of the amendments, one against them and five abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendments were passed.

CHAIRMAN (in Cantonese): As the amendments for the deletion of Part 7, Division 3 has been passed by the Committee, therefore, Division 3 of Part 7 (including the heading for that division and clauses 111, 112 and 113) has been deleted from this Bill.

CLERK (in Cantonese): Clauses 104 and 106 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 104 and 106 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHIARMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Dr David LI, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Jeffrey

LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mr LAU Kong-wah and Mr Frederick FUNG voted against the motion.

Mr CHIM Pui-chung, Dr LAM Tai-fai, Mrs Regina IP, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 43 Members present, 34 were in favour of the motion, two against it and six abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Commerce and Economic Development to clauses 2, 6, 7, 12, 14, 16, 20, 21, 22, 27, 33, 34, 39, 41, 45, 48, 50, 53, 56, 58, 59, 61, 63, 66, 78, 80, 81, 84, 92, 94, 99, 101, 108, 109, 115 to 121, 123, 125, 139, 141, 142, 149, 153, 155, 158, 160, 161, 166, 167, 172, 174 and 176, and the deletion of clauses 114, 157 and 159 be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): I would like to talk about the arrangement for the suspension of Council meeting this afternoon. Members have been notified earlier that we have not arranged to suspend the meeting today for lunch break. But as all Members have to attend the House Committee meeting at 2.30 pm this afternoon, if we continue our meeting until the start of the House Committee meeting, I think many Members who have enthusiastically participated in this meeting may not have time for lunch. As such, I have decided to suspend the meeting at 1 pm sharp, so that Members can attend the House Committee meeting after having lunch. This meeting will resume after the Finance Committee which follows the House Committee has ended. I hope Members can pay attention to that.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Dr David LI, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Frederick FUNG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Alan LEONG and Miss Tanya CHAN voted for the amendments.

Mr Abraham SHEK, Mr CHIM Pui-chung, Dr LAM Tai-fai, Mrs Regina IP, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 43 Members present, 35 were in favour of the amendments and seven abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendments were passed.

CHAIRMAN (in Cantonese): As the amendments to delete clauses 114, 157 and 159 have been passed by the Committee. Therefore, clauses 114, 157 and 159 have been deleted from this Bill.

CLERK (in Cantonese): Clauses 6, 7, 12, 14, 16, 20, 21, 22, 27, 33, 34, 39, 41, 45, 48, 50, 53, 56, 58, 59, 61, 63, 66, 78, 80, 81, 84, 92, 94, 99, 101, 108, 109, 115 to 121, 123, 125, 139, 141, 142, 149, 153, 155, 158, 160, 161, 166, 167, 172, 174 and 176 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses as amended and read out just now stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Ms Emily LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Frederick FUNG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Mr CHAN Hak-kan, Mr Paul CHAN, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Dr LAM Tai-fai, Mrs Regina IP and Mr Albert CHAN abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 35 Members present, 31 were in favour of the motion and three abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Clauses 1 and 35.

CHAIRMAN (in Cantonese): Mrs Regina IP has given notice to move amendments to clauses 1 and 35. The amendments proposed by Mrs Regina IP to clause 35 seek to amend subclauses (1) and (5), and to add subclauses (4A) and (4B).

The Secretary for Commerce and Economic Development has also given notice to move amendments to subclauses (4) and (5) of clause 35.

The Committee will first vote on Mrs Regina IP's amendments to clause 1 and subclauses (4A), (4B) and (5) of clause 35. If these amendments of Mrs Regina IP are passed, the Secretary for Commerce and Economic Development may not move amendments to subclause (5) of clause 35, but he may still move amendments to subclause (4) of clause 35; if these amendments of Mrs Regina IP are negated, the Secretary may move amendments to amend subclauses (4) and (5) of clause 35. Besides, irrespective of whether Mrs Regina IP's amendments are passed or not, she may move amendments to subclause (1) of clause 35.

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original provisions of clauses 1 and 35, as well as the amendments to the two clauses. I will first call upon Mrs Regina IP to speak and move her amendments, followed by the Secretary but the Secretary may not move amendments at this stage.

MRS REGINA IP (in Cantonese): Chairman, I move that clauses 1 and 35(5) be amended and subclauses (4A) and (4B) be added to clause 35.

Chairman, my amendments mainly concern two things. First, they seek to amend the commencement date of the Ordinance, so that the provisions in clauses 6 and 21 which are about the first conduct rule and the second conduct rule may only come into operation after the guidelines formulated by the Competition Commission (the Commission) have been approved by the Legislative Council. This is indeed a very important point. Although Secretary Gregory SO said in his speech that the Commission will consult the Legislative Council in the formulation of the guidelines, I think this is a "dishonoured cheque" because Secretary Gregory SO basically does not know who will be appointed by the Commission as the Chairperson and the Chief

Executive Officer. As we have no idea what sort of guidelines will be drawn up by the Commission in future, we have no reason to allow this Ordinance (especially the two conduct rules which will have bearings on a free economy) to come into operation only after a consultation procedure. For this reason, the Legislative Council, being the defender of public interests, is indeed duty-bound to guard the gate by requiring the Commission, after its inception, to table the guidelines to the Legislative Council for debate and approval before the conduct rules can come into operation.

Let me cite from a document that I have received most recently from an organization in support of my amendments. During the debate last week, some colleagues mentioned the need to learn from advanced countries in the formulation of the competition law. A couple of days ago I received the latest document expressing support for me. It is from the British Chamber of Commerce in Hong Kong (the British Chamber), and Britain is an advanced country where a competition law has long been in force. In this document it is said, "Finally, we agree it is very important that clear guidelines are issued dealing with the many issues raised after a full process of broad public consultation, and that the Bill should not become effective except insofar as necessary to establish the Commission and machinery of the legislation until that has been completed."

Unlike the Consumer Council, the British Chamber is not an active promoter of a competition law and it is, therefore, more objective. Based on its rich experience (including experience in the operation of a free market and its experience as an advanced country with a competition law in place), the British Chamber has made a response to my amendments. In its letter the British Chamber said, "May I first of all make the general observation that we very much welcome the thoughtful way in which you have tackled what is, by any standard, a bill that has the potential to significantly change the free market that has always prevailed in Hong Kong with all its imperfections."

In other words, it is from a fair and objective angle that the British Chamber welcomes Member's amendments, which reflect the careful consideration and analysis made by the Member on the Bill. The British Chamber also agrees that the Bill may significantly change the operation of the free market in Hong Kong. Although free market has operated in Hong Kong with imperfections, just as the case in many places, Hong Kong has been

renowned for its free market. Despite the absence of a competition law in the past, competition has remained keen in Hong Kong and we have been ranked the first or second freest economy in many international surveys. Now that we have to enact a bill of such great significance, and there is indeed every reason for Members of the Legislative Council to require the Commission to table the guidelines to the Legislative Council for debate before the first conduct rule and the second conduct rule can come into operation. These conduct rules may come into operation only after there is public acceptance for the guidelines. I think this is more than reasonable, and I urge colleagues to give their support.

Besides, I have proposed an amendment to require the Commission to issue guidelines particularly on "market", "market power" or "substantial degree of market power", in order to tell us how these expressions should be interpreted.

In the past debates, some colleagues said that there is competition law in overseas countries but not in Hong Kong. Colleagues from the legal profession, therefore, very much wish that the Government will enact this law, so that they can have the opportunity to practically work on it and understand how this legislation should be implemented. However, I have read the advertisement of the European Union (EU) for the recruitment of the Director-General. I have had contacts with the EU before, and I know that the European Commission of the EU has a whole Directorate establishment charged with competition-related responsibilities and headed by a politically appointed Competition Commissioner. The Commissioner is a politician, and there is a Director-General under him. I have read EU's advertisement for recruiting the Director-General, and what are their requirements for this Director-General? The Director-General is required to have double qualifications in that he must be well-versed in Competition Law and also in Competition Economics. It is because competition law is a very specialized field of knowledge. The Director-General must specialize in Law and Economics, preferably having a doctorate degree in both fields.

From this we can see that Secretary Gregory SO is in no position to give assurances to us on behalf of the future Chief Executive Officer of the Commission as to how "market", "market power" and "substantial degree of market power" will be interpreted. While the Secretary has proposed amendments to add certain economic concepts in the definition of "market power", such as setting out a threshold, these amendments are still inadequate to put our minds at ease. In the course of the deliberations on the Bill, many

colleagues (including myself) asked how the concept of "market" should be defined. Is the entire territory of Hong Kong taken as a market, or, as in the case of a branch of the "759 Oshin House" selling daily goods in Siu Sai Wan, is Siu Sai Wan taken as a market? Is "market" interpreted on a locality basis? Is it that "market" varies, depending on the class of products? Market can also include overseas markets. How should it be defined? The answers to these questions are vague, and this has given cause for concern. I think "market" should be interpreted on a locality basis. For example, residents in Tai Po Market will not go to Sha Tin to patronize the cooked food stalls there, because when the public want to patronize cooked food stalls, they mostly go to those in their own districts or in districts where they work. To operators of cooked food stalls in Tai Po Market, their market is in Tai Po Market.

For these reasons, if economists or the Commission will conduct studies in future and come to the view that "market" actually refers to a locality-based market, small and medium enterprises will fall foul of the law easily. Therefore, in my view, as Members of the Legislative Council are the defenders of public interest and the gatekeepers for this Bill, it is indeed reasonable for us to ask the Commission to issue guidelines to tell us how these expressions should be interpreted. The first conduct rule and the second conduct rule should come into operation after the guidelines have been debated and approved by the Legislative Council.

Moreover, I would like to explain the other group of amendments that I have proposed, which call on the Government to revise the drafting of the Bill in respect of granting exemption to statutory bodies. The Bill now proposes to grant exemption to all 570 statutory bodies, except those specified by the Chief Executive in Council. My proposal is just the opposite, which is to incorporate all statutory bodies into the scope of the Bill first and grant exemption only to those bodies which, in the view of the Chief Executive in Council, meet certain criteria. This amendment represents a middle-of-the-road proposal between the Government's amendments and those of colleagues in the legal profession.

CHAIRMAN (in Cantonese): Mrs Regina IP, concerning your amendment to clause 3, you can put forward your views in the next joint debate.

MRS REGINA IP (in Cantonese): Can I not speak on this group of my amendments now?

Alright. Thank you, Chairman. With these remarks, I hope that colleagues will support the first group of my amendments. Thank you.

Proposed amendments

Clause 1 (see Annex I)

Clause 35 (see Annex I)

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, I will also move amendments to clause 35 later on. This clause is about the issue of guidelines by the Competition Commission (the Commission) on the conduct rules, decisions and block exemption orders. The original clause 35(4) already provides that the Commission must consult any persons it considers appropriate before issuing any guidelines or amendments to them. To enhance accountability, we have accepted the proposal of the Bills Committee of introducing an amendment to provide that the Commission must consult the Legislative Council before issuing any guidelines or amendments to them, in order to show more clearly that the Commission is accountable to the public.

With regard to clause 35(5)

(Mr WONG Yuk-man stood up)

CHAIRMAN (in Cantonese): Secretary, please hold on. Mr WONG Yuk-man, what is your point?

MR WONG YUK-MAN (in Cantonese): No Member is here in this Chamber to listen to the Secretary.

CHAIRMAN (in Cantonese): Are you requesting a headcount? Clerk, please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Secretary, please go on.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, I now continue to speak on the amendments to clause 35(5). We propose that this clause be amended to provide that the Competition Commission (the Commission) is required to make available its guidelines on the conduct rules, decisions and block exemption orders through the Internet or a similar electronic network, and in any other manner it considers appropriate. These amendments are similar to those proposed by us to clause 58 in relation to publication of guidelines on complaints and investigations.

Moreover, we also propose to amend clause 35 by adding subclauses (6), (7) and (8) to respectively provide that firstly, a person does not incur any civil or criminal liability only because the person has contravened any guideline issued by the Commission; secondly, in any legal proceedings, the guideline is admissible in evidence if it is relevant to determining a matter that is in issue; and thirdly, guidelines issued and all amendments made to them are not subsidiary legislation. These amendments mainly seek to clarify the legal status of the guidelines, and they are similar to the amendments proposed by us to clause 58 in relation to publication of guidelines on complaints and investigations.

Chairman, with regard to the amendments moved by Mrs Regina IP to clause 35 and clause 1, we consider that these amendments are neither necessary nor appropriate. I will respond in detail when I speak for a second time later. Thank you, Chairman.

MR RONNY TONG (in Cantonese): Chairman, it is difficult for us to accept the amendments proposed by Mrs Regina IP mainly for two reasons. Firstly, it seems that Mrs IP does not have a clear idea about the legal status that the

guidelines should have, and I think this is more like putting the cart before the horse. Chairman, perhaps let me explain this point. The guidelines actually have no legal effect under the framework of this law; nor are they part of the law. As we can see from international experiences, in almost all countries with a competition law, these guidelines are merely guidelines for practical operation which carry no legal effect.

Chairman, I have visited the European Union (EU) twice during the past eight years, and during both visits, I met with members and the Director-General of its competition commission to explore the implementation of a competition law. During the last visit, Mr Albert HO and I met with members of the competition commission. They told me that under the EU, it took a decade to complete the first set of guidelines on codes of practice. The main reason was that they had to accumulate experiences in enforcing the law and gauge public response before a set of guidelines could be finally drawn up to facilitate operation and enable the community to understand more easily the operation and implementation of the law.

Chairman, this is precisely why the proposal to postpone the commencement of this law until the guidelines are completed is, in fact, tantamount to repealing this law in another way. This is completely not conducive to this discussion today in which we hope to see the passage of the Bill. Worse still, this cannot respond to the aspirations of many Hong Kong people and entirely runs counter to their wish for a competition law to be enacted for the protection of the rights and interests of consumers and small and medium enterprises.

Secondly, Chairman, it is difficult for us to accept that the Ordinance, if enacted, will be subject to the restrictions of the guidelines. Since the guidelines have no legal effect and when the guidelines are examined in court, the Court will first make reference to the fundamental principles based on which the Ordinance was enacted. Even in overseas countries, these codes of practice or guidelines are often judged by the Court as unlawful, meaning that they are not in line with the provisions in the principal legislation. If such being the case, we consider that the operation of the Ordinance should not be subject to the guidelines. On the contrary, the guidelines should be bound by the law.

Chairman, another point which is of our concern is Mrs Regina IP's proposal that at least the two major provisions of the Bill, that is, the provisions on the first conduct rule and the second conduct rule, will only come into operation after the relevant guidelines have been approved by the Legislative Council. Chairman, before Members of the Legislative Council are to be elected by universal suffrage, this Council is still dominated by the commercial sector. Before the implementation of universal suffrage for the Legislative Council election and when directly-elected Members representing Hong Kong people are still in the minority, this amendment, if passed, may mean that the legislation will never be brought into operation. Therefore, in our view, we consider this proposal absolutely unacceptable.

Chairman, under such circumstances, it is difficult for us to support Mrs Regina IP's amendments to clause 1 and to clauses 35(4A), (4B) and (5).

However, Mrs Regina IP has also proposed an amendment to clause 35(1), which only expects the Commission to provide in the guidelines the interpretations for such expressions as "market", "market power" and "substantial degree of market power". Chairman, we consider this proposal acceptable. In fact, during the deliberations of the Bill, the Government has repeatedly stated that we should look to the guidelines for explanations that can be more easily understood by ordinary members of the public, and this is also considered acceptable in overseas experience. As long as the interpretations will not override this Bill which will probably be enacted today, I think the amendment is acceptable. Therefore, Chairman, we support the amendment to clause 35(1).

Thank you, Chairman.

MRS REGINA IP (in Cantonese): Chairman, I have listened very carefully to Mr Ronny TONG, he explained why he could not support my request that the first conduct rule and the second conduct rule may only come into operation after the guidelines drafted by the Competition Commission have been approved by the Legislative Council.

I have paid special attention to the point raised by Mr TONG. He said that after visiting the European Union (EU) for a number of times, he learned that the codes of practice on local competition laws were promulgated only after the

laws had come into effect for almost 10 years. I would like to point out that the situation of the EU is different from that of Hong Kong. The competition laws of the EU have a long history, and as I had pointed out in the Bills Committee, the purpose of drafting the competition laws by European countries and the United States is different from that of Hong Kong. The competition laws in those countries do aim at dealing a blow to "predators", in particular, the multi-national corporations. The same applies to our country. In fact, I have collected some information, from which I learnt that the competition law in our country was passed in 2008. From 2009 onwards, articles covering the decisions of the Ministry of Commerce in respect of the competition law have been published. The main objectives of the competition law in our country as well as that in European countries and the United States are to regulate global and international mergers and acquisition, which rarely occur in Hong Kong.

I learn from a report in the *Financial Times* that the competition law in China is "very powerful" indeed. For instance, in 2009, the Ministry of Commerce of China made a decision on the acquisition of a British company by Mitsubishi Rayon Co. Ltd. of Japan, stipulating the types of business to be engaged in order to get the approval for the merger. Therefore, it will really take the EU eight or 10 years to formulate the guidelines based on numerous rulings after the implementation of the competition law.

However, the situation in Hong Kong is different. Hong Kong is now enacting a new legislation. As pointed out by the British Chamber of Commerce in Hong Kong, the Ordinance may change the operation of Hong Kong as a free market economy. Regarding various concepts, clause 35 provides that "The Commission must issue guidelines — indicating the manner in which it expects to interpret and give effect to the conduct rules". In my opinion, such a new and unprecedented Ordinance may change the nature of the Hong Kong economy. Thus, interpretation should be made before the commencement of the Ordinance.

I so submit, thank you, Chairman.

(Mr Ronny TONG stood up)

CHAIRMAN (in Cantonese): Mr Ronny TONG, you can speak again later on.

MR RONNY TONG (in Cantonese): Chairman, I do not think it is necessary for me to speak again. I will be brief. I think Mrs Regina IP has misunderstood what I said earlier. I do not mean that the Competition Commission in Hong Kong will take 10 years to issue the guidelines. I just said that the basic spirit is that the guidelines should be drawn after the law has come into effect. Chairman, we should not put the cart before the horse.

MR ALBERT HO (in Cantonese): Obviously, the formulation of guidelines, which are of the same nature as a code of practice, is to help the public understand the policy principles of the competition law, so as to make specific consideration from a practical perspective.

In fact, many ordinances have provided for codes of practice. As we can clearly remember, the several anti-discrimination ordinances, including the last enacted Race Discrimination Ordinance, have detailed provisions on the codes of practice. These codes of practice aim at enabling employers and employees to properly prepare themselves in order to avoid giving rise to any situation being conceived as discriminative. There are detailed codes of practice regarding race, sex and disability discrimination. However, the nature of these codes is to enable us to have a better understanding of the legislation. From the administrative and enforcement point of view, all these codes are guidelines to help us understand the legislation. In nature, they are not law because when the Court handles cases on competition law, it will mainly base its understanding on the legal provisions.

All along, the codes of practice have never been prescribed in the form of subsidiary legislation, since there are many actual examples to facilitate our understanding. When these codes of practice are submitted to court, the Court is not bound by such codes. When interpreting the legislation, the Court may make reference to the codes of practice, yet it has the absolute power to rule that the interpretation contained therein is wrong, and consequently give a new interpretation. However, in considering that some people or institutions may have made their decisions based on the direction of the codes, the Court may ultimately rule that those decisions are in breach of the principal legislation, such as competition law or anti-discrimination law, but in sentencing, the Court may consider that the person has not intentionally violated the law, and hence the

penalty and sanction imposed will be much lighter. This is how the system actually operates.

There are situations where there is a need for subsidiary legislation, but definitely not codes of practice. In future, the guidelines, which are similar in nature as codes of practice, may be as thick as a telephone directory. Therefore, we should not muddle things up. If the guideline is not a piece of legislation, there is no point of submitting it to the legislature to seek approval before implementation. This is not a usual practice, and we have somewhat misunderstood the original functions of the codes of practice.

Nevertheless, we clearly know the importance of the guidelines. In the Bills Committee, we have repeatedly requested the Government to provide us with a sample for our review. Upon the establishment of the Competition Commission (the Commission), I hope that the guidelines can be formulated expeditiously after consulting the Legislative Council, so that the public would understand and the legislation can be enforced. That is a meaningful approach.

According to many expert members of overseas parliaments who are responsible for drafting the competition law, their competition commissions have close interaction with the parliaments. Besides holding frequent discussions, the competition commissions also have a lot of interactions with the third party stakeholders — including the business sector and other relevant non-governmental organizations — to discuss whether the codes of practice require further updating and amendment. However, if everything has to go through sophisticated legislative procedure, the guidelines, of a nature similar as the codes of practice, will have become too complicated for application. As I said earlier, the codes of practice are specifically written with many practical examples. So, how do we handle them?

All in all, I agree to what Mr Ronny TONG has just said, that is, we should not require the guidelines to get prior approval of the Legislative Council before they come into effect. Like Mrs Regina IP, we are very concerned about the formulation of the guidelines. I believe the whole legislature and society at large will keep a watchful eye on the work of the Commission in the future. I also believe that they will demand the Commission to provide the public with a set of guidelines as soon as possible, so that they can be implemented after extensive public consultation.

CHAIRMAN (in Cantonese): Mrs Regina IP, this is the third time that you speak.

MRS REGINA IP (in Cantonese): Chairman, I thank Mr Ronny TONG and Mr Albert HO for explaining their reasons why they oppose my amendments. However, I wish to point out that the situation in Hong Kong is different from that of the EU. In the EU, there are lots of mergers and acquisitions by large consortia, as well as numerous disputes. The guidelines are issued only after the EU has made rulings. Hence, constant reviews should be conducted. Mr TONG has pointed out that in the EU, the codes of practice are revised after having accumulated 10 years of experience. This is very much needed and I believe we will do the same in the future.

However, it is provided unequivocally in clause 35 that the Commission must issue guidelines indicating the manner in which it expects to interpret and give effect to the conduct rules. We should be told right from the beginning how to interpret and give effect to the conduct rules. This is very important, particularly there are so many small and medium enterprises (SMEs) who fear that they will be hard hit after the competition law has come into effect.

Therefore, I urge Members in this Chamber, particularly those from the business sector and those who are always proud of being representatives of the interests of SMEs to seriously consider my amendments and support them. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR WONG YUK-MAN (in Cantonese): Chairman, regarding the amendments proposed by Mrs Regina IP, we

MR ALBERT CHAN (in Cantonese): Chairman, just now I said there should be more Members listening to the Secretary's speech. Now, there should also be more Members listening to Mr WONG Yuk-man's speech.

CHAIRMAN (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

MR WONG YUK-MAN (in Cantonese): Chairman, regarding the amendments proposed by Mrs Regina IP, our position is that we support them in principle, particularly the proposal to add subclause (1)(aa) to clause 35. In fact, her amendments seek to enable the Legislative Council to play its role, instead of giving up its powers. In May last year, when the Secretary submitted the draft first conduct rule for our reference, we found that there were serious problems. However, before commenting on Mrs Regina IP's amendments, I find the Chinese and English versions of her letter requesting Members to support her amendments very interesting. There are slight differences between the two versions, and I think it is very meaningful to discuss this issue.

The English version contains one more paragraph than the Chinese one. Let us take a look at the Chinese version first. In fact, her amendments can be divided into two parts, one of which is concerned about the exemption for statutory bodies, which will be discussed in the next part of our discussion. Now let us first discuss the part on "Empowering the Legislative Council to examine the Key Guidelines", which refers to clause 35. She pointed out that the proposed competition law is unprecedented and could have a highly disruptive effect on Hong Kong's free market economy as well as many individual enterprises. The Guideline on the First Conduct Rule and the Guideline on the Second Conduct Rule mainly list the example of anti-competitive activities and provide for the detailed codes of practice. Although the Commerce and Economic Development Bureau has issued a sample for reference At that time, we had indeed held a lot of discussions and many small and medium enterprises (SMEs) continue to be deeply concerned about the guidelines of the conduct rules which have yet to be finalized and they have expressed a lot of views. Many Members in the Chamber who belong to the pro-establishment camp and represent SMEs have also expressed lots of opinions.

In her English letter, Mrs IP wrote and I quote "in addition to the guidelines on the first and second conduct rules, I propose that the future Competition

Commission be required to issue guidelines indicating the manner in which it expects to interpret the expressions 'market', 'market power' and 'substantial degree of market power'. The above guidelines on these key concepts and the two conduct rules must also be submitted to the Legislative Council for approval, prior to issuance. Besides, the first and second conduct rules may only come into effect after these guidelines have been approved by the Legislative Council." Then, she said in a very polite manner in the Chinese letter, "I implore you to vote in favour of my amendments to ensure that the Competition Bill is fair and impartial to both the public and private sectors. Moreover, the Legislative Council should continue to play the gatekeeper role on behalf of the public and private enterprises in respect of this Ordinance, and has genuine powers to scrutinize the important guidelines as prescribed in the Ordinance."

However, in the English version of the letter, there is one more paragraph beginning with the words "I strongly believe". The last part of this paragraph reads: "Legislators are by the nature of their work more responsive to public opinion than officials who are non-accountable and so should be empowered to securitize and approve the key guidelines " There is no such paragraph in the Chinese version. Maybe she attaches more importance to English, and considers that she can be sloppy when communicating with us in Chinese. She will only be responsible for what she said in English. I think this is a very interesting point. Nevertheless, this will not undermine the spirit of her amendments.

In our opinion, let us first discuss the issue according to the Government's logic. Mrs IP has highlighted three terms, which are very important for the understanding of the first and second conduct rules. We have raised this view in the Bills Committee and some Members have suggested replacing these terms with those which are more comprehensible to the general public. However, according to the Government, the relevant provision should tie in with the international standards or else the Tribunal to be set up in future will not be able to apply a large pool of case law and jurisprudence.

We have reservations about the Government's argument. Even though the Government's logic is acceptable, the general public, particularly those who cannot afford the consultation fees of senior counsels or those who do not know how to get access to relevant cases in foreign countries and jurisprudence, will not be able to fully understand the relevant legal requirements by simply reading

the provisions of the Competition Ordinance. Hence, guidelines to be issued by the Commission will be most important. The provision in clause 35(1) in respect of the guidelines cannot meet this requirement. In particular, the Bills Committee had debated hotly on the three terms proposed to be added by Mrs IP. To the public, these three terms are crucial in their understanding of the first and second conduct rules. Therefore, we support Mrs IP's amendment to clause 35(1) by adding subclause (1)(aa).

In response to the concerns of the Bills Committee members on the guidelines, the Government has provided the draft guidelines of the first and second conduct rules for our reference. We also have this document in hand, which is voluminous. We had carefully read through the guidelines and had identified many problems. I believe the Government should have taken note of this. The Government indicated that these problems would be dealt with by the Commission to be set up in future. But now, Mrs IP requests that the guidelines should be submitted to the Legislative Council for approval. I think this is a reasonable request and Members of the Legislative Council should not give up their entitled powers. Why should we refrain from doing what we should do?

Though the Government had provided the draft guidelines of the first and second conduct rules to us, we concluded after discussion, that the guidelines could not address our concerns. As it is mentioned in paragraph 63 of the Bills Committee report, we opine that "the guidelines are general in nature and are not clear enough to address the concerns of SMEs in specific trades". This is precisely the views of the Bills Committee.

On the other hand, the Government did not accept the proposal of some Members to prescribe the guidelines in the form of subsidiary legislation, subject to the scrutiny of the Legislative Council. The Government explained that its purpose is to "allow flexibility for the Commission to issue and amend the guidelines as and when necessary in order to respond swiftly to the rapid changes in the market". We disagree to this remark as subsidiary legislation subject to positive vetting or negative vetting will provide sufficient flexibility to the Commission to act accordingly in response to market conditions. This is also the purpose of subsidiary legislation.

Many principles in the Bill are far too abstract. If the Government merely relies on the issuance of guidelines which have no legal effect, the public will be

at a loss, not knowing what to do. This will run counter to the spirit of rule of law that the laws should be comprehensible to the public.

At this point, I must digress a little. Now this Council is debating and scrutinizing an important Bill. As a Member of the Legislative Council, I obviously have to adopt the most serious attitude towards Mrs Regina IP's proposal.

Now I am making a speech. I may be the last speaker. And this is most bizarre. Why do other Members not speak on Mrs IP's amendment? I know that many Members oppose this amendment, but I support it. Can those Members who oppose it give their reasons so that we can listen with all ears? As for the first and second conduct rules which are so important, we request that the draft guideline be submitted to the Legislative Council for consideration and approval, instead of being decided by the Commission alone. Why is this not feasible? Why is such a simple matter turned into a complicated issue? If it is not feasible, then tell us the reasons. Why did the Government say nothing?

CHAIRMAN (in Cantonese): Mr WONG, please speak on the relevant clause. Other Members will express their views if they have any.

MR WONG YUK-MAN (in Cantonese): Thank you, Chairman. In the Interpretation of the Bill, even the meanings of some key terms are not given. The Government explained to the Bills Committee that the scope of the Bill would be narrowed down by the guidelines. But it is worth noting that the guidelines are not legally binding. The guidelines have no legal effect, am I right, Secretary? For instance, the definition of "undertakings" and whether a subsidiary company and its parent company are two undertakings are some of the legal principles in dealing with the Competition Ordinance. The Government and the Legislative Council should have the responsibility to let the public know the relevant principles. It would not be appropriate to incorporate these concepts into the guidelines which do not have legal effect.

Concerning the concepts mentioned just now, we have spent a long time debating on the definition of "undertakings". Should a subsidiary company and its parent company be regarded as two undertakings? These are the legal

principles in dealing with the Competition Ordinance. If the public do not have a thorough understanding of these principles or if they only have very vague concepts, how can it be appropriate to incorporate such important concepts into the guidelines which are not legally binding? Furthermore, it is also unsatisfactory to leave the details of the legal principles to be formulated by the regulatory body, as this will subsequently turn the body into a law-enforcement department.

According to the Government, it is the general practice of other jurisdictions not to make the guidelines subsidiary legislation. We find such an arrangement most unsatisfactory. But we are helpless in this regard. Therefore, we will also support Mrs IP's proposal of adding subclauses (4A) and (4B) to clause 35. Under the proposed subclause (4A), (a) the guidelines and (b) the amendment of the guidelines must be submitted to the Legislative Council for approval. According to subclause (4B), the Legislative Council may by resolution amend the whole or any part of the guidelines or amendments submitted. Certainly, the most important point is the addition of 35(1)(aa), which is the most important amendment.

Mrs IP has also proposed to add subclauses (5) to (8) to clause 35, which are in line with the Government's amendments. This amendment has clarified certain points as follows: Firstly, a person does not incur any liability only because the person has contravened any guidelines, as provided in subclause (6). Secondly, in any legal proceedings, the guideline is admissible in evidence in the proceedings, as provided in subclause (7). Thirdly, the guidelines are not subsidiary legislation, as provided in subclause (8). Under the premise that subclauses (4A) and (4B) are enacted so that the Legislative Council is authorized to scrutinize and amend the guidelines of the Commission, we will not oppose the amendment concerning subclauses (6) to (8). But the premise is that the Legislative Council must have the right to scrutinize and amend the guidelines of the Commission. Under such circumstance, we will not oppose subclauses (6) to (8) in the amendment. I must highlight this point to Mrs IP.

Under these arrangements, although the guidelines are not subsidiary legislation, clause 35(7) specifies that a guideline is admissible in evidence in the legal proceedings, which facilitates the Court in interpreting the first and second conduct rules under the Competition Ordinance. The guidelines will also help the public understand the requirements of the Competition Ordinance, particularly the principles in common law cases, as well as provisions which have not been

incorporated into the Competition Ordinance because of technicality. This approach will better tally with public interest and the rule of law. In view of the importance of the guidelines, the Legislative Council should deal with it in a serious manner. It is appropriate to authorize the Legislative Council to scrutinize and amend the guidelines, as the powers of the Legislative Council in enacting legislation and monitoring the implementation of legislation can then be realized.

We often claim to be Legislative Council Members, responsible for enacting the legislation. But what legislation have we really enacted? First and foremost, a Private Member's Bill is subject to the restrictions of the Basic Law. After the Bill has been presented, it has to go through the system of separate voting. Mrs IP's amendments may be voted down and this is highly likely. Even though a Member has put forth a good idea, it may not be passed under the separate voting system. Given that this Council is so worthless and our legislative powers are incomplete, how can we give up our entitled power to monitor and scrutiny the guidelines on the first and second conduct rules? Can we justify our acts? Can the Legislative Council claim to have the power to enact legislation with its hands tied? Only the Government can introduce a bill, and we press the three buttons as a formality. When we Members want to play a role by proposing amendments to a bill, we are being "killed" under the separate voting system.

Therefore, if Members have any views on the amendments proposed by Mrs Regina IP, they can elaborate their views as far as possible. I really wish to listen to the views of the opponents, so that I can make a 15-minute speech later on. Buddy, I have not finished with my speech, there are two more paragraphs to be read out. So, I hope Members will voice their views and criticize Mrs Regina IP.

CHAIRMAN (in Cantonese): Mrs Regina IP, this is the fourth time that you speak.

MRS REGINA IP (in Cantonese): Chairman, I am not filibustering. I only wish to add a point in response to what Mr Albert HO said earlier. Mr HO remarked that these guidelines or codes of practice are not subsidiary legislation and so, they rarely need to be approved by the Legislative Council.

In fact, although this has happened quite rarely, there is indeed such an example. There was a case in which the Democratic Party supported the codes of practice that required approval by the Legislative Council. This example is the United Nations (Anti-terrorism Measures) Ordinance (Cap. 575) enacted in 2002. Section 12A(14) provides that the Secretary (that is, the Secretary for Security) "shall prepare a code of practice in connection with (a) the exercise of any of the powers conferred; and (b) the discharge of any of the duties imposed, by this section, and any such code shall be laid before the Legislative Council and shall not be promulgated until the code has been approved by the Legislative Council."

Therefore, there is indeed a precedent of codes of practice requiring the approval of the Legislative Council, which was also supported by Members of the pan-democratic camp. I remember that I had discussed this provision with Mr Martin LEE at the time. Certainly, I understand the point made by the Democratic Party that an anti-terrorism legislation had extensive implications and it could also have a significant impact on human rights. Then, I wish to ask colleagues: Are the operators of small and medium enterprises not human beings? Should their rights not worthy of our protection? Why can some colleagues be strict to the Secretary for Security but lenient to the Secretary for Commerce and Economic Development? I think since this competition law can be called by some people as "Article 23 for the economy", it is indeed necessary for us to require the codes of practice to be approved by the Legislative Council, in order not to give up our duty as Members of this Council to monitor the Government.

I so submit. Thank you, Chairman.

DR LAM TAI-FAI (in Cantonese): Chairman, I will make it clear from the outset that I support the amendments proposed by Mrs IP today. I strongly oppose the Government's proposal that the Competition Commission (the Commission) only has to consult the views of such persons as it considers appropriate and the Legislative Council when drawing up and revising guidelines, without having to secure the approval of the Legislative Council. I also feel very worried about this requirement, and I believe the great majority of SMEs also feel the same.

As I said in the debate on the resumption of the Second Reading yesterday, many provisions and legal terms are vaguely defined in the principle legislation.

Concerning such ambiguous provisions, the Government said that the future Commission will deal with them and carry out consultation. This implies that the power of the Commission would be very great, responsible for monitoring, investigation as well as prosecution. However, the Government has not set clear guidelines for its compliance. In this connection, the Commission may engage in black box operation; it also plays different role, as a law-enforcement officer and a judge at the same time. How then will SMEs or the business sector not feel worried?

In fact, the formulation of these guidelines needs the assistance of people who are familiar with the business sector and understand the overall operation of SMEs. However, we are not sure about the composition of the Commission, except that it will be comprised of five to 16 members. The Government has not clearly stated how many members would come from the business sector and SMEs. Will there be a lot of members from the legal sector? Will there be a lot of members from the academic sector?

We are very worried that most members in the Commission are armchair analysts with no practical experience. They work according to the law and theories, with no knowledge of the actual business operation. Apart from the Minimum Wage Ordinance, we now have a competition law which is far from perfect, and coupled with the present global economic downturn, SMEs are facing internal and external threats. As representatives of SMEs, how can we feel at ease? How can we not be worried?

If these guidelines do not have to be submitted to the Legislative Council for scrutiny and the Commission is given full power to deal with them as pointed out by Mrs Regina IP just now, there are many terms, such as "market" and "market power", which are not clearly defined. Unless the Secretary can explain such terms in detail without having to read from the script when he speaks later and make us understand the definition of "market" and "market power", we cannot possibly make a "U-turn" and give our support. Up till now, most Members, including me, and even Mrs Sophie LEUNG and Mr Andrew LEUNG, only have very limited understanding of the explanations given by the Secretary on the meaning of such terms. How then can we explain to the SME sector such vague and unclear guidelines?

According to the Government, the Commission will, in future, consult the views of such persons as it considers appropriate. This is really subject to interpretation. Who are these "persons as it considers appropriate"? Is Mrs Regina IP an "appropriate person"? Is Mr Ronny TONG an "appropriate person"? Is Mr Albert HO an "appropriate person"? How does the Government define "appropriate person"? Will the Government define "appropriate person" selectively, thus be selective in the views collected? This is a situation that we have no control of. However, the problem is that the Commission and this competition law will control the life-blood of all SMEs in Hong Kong, thus affecting their survival and development. If the Government only listens to views to one side in the future, what can be done? If the Government is selective in listening to views, what can be done?

Chairman, when it comes to listening to views, from my experience in the past several years, while the Government is very willing to listen to views, it has never acted on them. In the past several years, do you think I have not proposed in the legislature the upgrading and restructuring of SMEs? Do you think I have not reflected to the Government how to amend section 39E of the Inland Revenue Ordinance, so as to assist SMEs in upgrading and restructuring? I have said so much that my voice has turned hoarse. I am not the only one who have put forward these proposals. Mr Andrew LEUNG, Mrs Regina IP and Mr Paul CHAN have all made proposals, and many representatives of the business sector or people supporting the business sector have also made proposals. However, it has been difficult for our proposals to make much headway. The Government tends to stay in a rut and is unwilling to move forward. As such, can it pay heed to the views of others? The Government does listen, but it instantly forgets what have been said, or it just shut the ears.

In that case, what is the use of expressing our views? I believe no one dares say that my views on how to assist SMEs in upgrading and restructuring are undesirable. I think no one dares to raise objection. What is the original legislative intent of section 39E of the Inland Revenue Ordinance? It is to prevent "sale and leaseback" by large enterprises, thus giving rise to acts of tax avoidance through leveraged leasing. In putting forward this proposal, I am only following the main trend. We have to look across the border, pool together the advantages of China and Hong Kong by moving machinery and equipment to the Mainland to carry out the production there to boost our competitiveness and production capacity, so as promote economic development in Hong Kong and

even the entire Pearl River Delta Region. Is this proposal unsound? Do these views lack merit? Did the Government listen to them?

If the Government only listens to views and carries out consultation without taking action, we can foresee that the future situation will remain the same. After the Commission submits the guidelines to the Legislative Council, we will voice as many views as we can. Even though these views are highly justified and the mass media and our Honourable colleagues also agree with them, at the most, the Government would just say, "Thank you, Dr LAM Tai-fai for his views just now. We will consider them in depth and cautiously." This is no use and cannot help SMEs.

Chairman, the fundamental goal of the Government in formulating any legislation must be to help the public and promote Hong Kong's development, so it is of paramount importance to have public interest as the ultimate consideration. Just now, some Members pointed out that the guidelines are not subsidiary legislation, nor can it be considered as such. I have no such profound legal knowledge and I only know how to work for the welfare of SMEs and the Hong Kong economy. I believe if the Government is bent on having its way and introducing this piece of legislation riddled with loopholes, as well as refusing to take on board our amendment proposal, which stipulates that the guidelines must be approved by the Legislative Council in the future, SMEs will have no end of trouble in the future.

In addition, the Secretary said yesterday that if these guidelines have to be submitted to the Legislative Council for approval, that would be like creating obstacles for the guidelines. Having been worked in the legislature in the past few years, I come to appreciate the fact that government officials can say whatever they find expedient. When the Government needs us, it would say that it hopes the Legislative Council can assist in monitoring and gatekeeping; but when it does not need us, it would say that the Legislative Council is putting up obstacles.

Secretary, I wish to tell you that I attach greater importance to the development of SMEs than you do, and I understand the importance of developing the industrial and commercial sector, so why would I put up obstacles? Everything we do is intended to facilitate the development of the Hong Kong economy in a sustainable, positive and healthy manner. We have no

intention to put up obstacles, so why does the Secretary have to speculate about our motive? Why does he want to look at us in such a narrow-minded and erroneous mind? We are doing positive and pragmatic things that should be rightly done, rather than posing difficulties to the Government and putting up obstacles everywhere. We are doing nothing of this sort at all.

I hope that the Secretary can change his mindset. Otherwise, in the future, when dealing with any matter, he would think that the Legislative Council wants to drag the Government out in its work, thinking that people representing the business sector want to put up obstacles. Correcting this kind of thinking is very important, so I hope the Secretary can consider this carefully and accept Mrs Regina IP's views.

I also hope that Members and representatives of the business sector would understand that if we let the Government get through this time, in the future, members of the sector will surely put the blame on us, querying why we did not demand the Government to sort out the details of the guidelines and the definitions of "market" and "market power" first. In that event, we cannot possibly justify ourselves no matter what explanations we proffer, and we would not know how to explain to the public. Chairman, I will stop here for the time being.

MR ALBERT CHAN (in Cantonese): Chairman, a headcount please.

CHAIRMAN (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.

(THE CHAIRMAN'S DEPUTY, MR FRED LI, took the Chair while the summoning bell was ringing)

(After the summoning bell had been rung, a number of Members returned to the Chamber)

DEPUTY CHAIRMAN (in Cantonese): Mr Albert CHAN, please speak.

MR ALBERT CHAN (in Cantonese): Deputy Chairman, the present issue under discussion is quite interesting and quite ironical too. This is because the proposal put forward by Mrs Regina IP seeks to prescribe the guidelines in the form of legislation, which has to be passed and scrutinized by the Legislative Council. In the past two decades, in this legislature, the pro-democracy camp has been lobbying and demanding strongly that more provisions be prescribed in the laws and that the Legislative Council should have the power to scrutinize and approve all these provisions, particularly when formulating public policies and the relevant laws in various areas, such as transport, infrastructure, planning and urban planning, including the appointment and recruitment of Secretaries of Departments and Directors of Bureaux. However, today, in the legislature, it is utterly ridiculous that the proposal to incorporate the guidelines into the legislation was put forward by a former Director of Bureau who played a part in the executive in the past.

This former Director of Bureau, who had worked as a civil servant for some 20 to 30 years in a government organization that is criticized by us as an executive hegemony, proposes that the Legislative Council's power of oversight and scrutiny be strengthened. Dr LAM Tai-fai, who represents the business sector, has indicated his support in clear and unequivocal terms with a view to defending business interests. However, it turned out that the pro-democracy camp has come out in opposition. The only explanation for this kind of logic is that whatever the enemy supports must be opposed. Mrs Regina IP and the pro-democracy camp have been at loggerheads with each other all the time. However, strangely, Mr WONG Yuk-man, who has voiced the most severe criticisms against Mrs Regina IP before, has voiced his support for Mrs Regina IP this time.

The People Power always comments on various issues in a matter-of-fact manner, in contrast to some pseudo-democrats, who would oppose or refuse to support whatever their enemies or people other than their own propose. For example, two or three months ago, we demanded that "corrupt Donald TSANG" be removed from office. At that time, the pro-democracy camp refused to sign in support of the motion initiated by Mr Paul TSE on removing TSANG from

office, thereby letting slip the opportunity to propose the motion on removing "corrupt Donald TSANG" from office.

Deputy Chairman, I really hope that Members of the pan-democratic camp — particularly Members from the Civic Party — can consider carefully whether or not they would change their mind. Of course, I understand that at present, Mr Ronny TONG is the one dealing with this policy. Among various pieces of legislation in Hong Kong, there are actually quite a number of examples of formulating guidelines in the form of subsidiary legislation, which is then scrutinized by the Legislative Council. I do not have the time to look at all the laws but I am more familiar with the legislation on environmental protection.

The legislation on environmental protection is a very good example that we can make reference to. The legislation can be divided into three levels, one being the Ordinance itself, that is, the Environmental Impact Assessment Ordinance (Chapter 499). Apart from the Ordinance, there are also regulations, that is, various regulations on environmental impact assessments, which are equally legally binding. These regulations cover many areas, including such minor areas as fees and charges, which are also prescribed in the form of regulations that are scrutinized and passed by the Legislative Council. On a more specific level, there is technical memorandum, that is, the Technical Memorandum on the Environmental Impact Assessment Process, which is also part of the legislation. That is to say, the entire piece of legislation is divided into three levels — Ordinance, regulation and technical memorandum — and it is very detailed.

Mr Abraham SHEK knows very well that the Town Planning Ordinance also has different levels. Apart from the Town Planning Ordinance, the Town Planning Board (TPB) also prescribes the Hong Kong Planning Standards and Guidelines. However, this is not a subsidiary legislation. We have been lobbying for 20 years for the inclusion of these planning standards and guidelines that affect the public and town planning in the legislation. The present planning standards and guidelines cover many areas, including residential density, community facilities, recreational, open space and greening, industry, retail facilities, utility services, internal transport facilities, environment, nature and heritage conservation, urban design guidelines and miscellaneous planning standards and guidelines. There is a chapter for each area and each chapter is further divided into many sections. For example, the chapter on residential

density is divided into six sections, including Introduction, Function of Residential Density Guidelines, Building Density Guidelines, Population Density Guidelines, Residential Density Guidelines for Strategic and District Planning, as well as relevant appendices. Town planning is carried out in accordance with the relevant standards and guidelines.

In the past couple of decades, why have we been lobbying for the incorporation of these guidelines into the Town Planning Ordinance? These guidelines set down objectives standards and guidelines and I believe it is absolutely necessary for them to have legal effect. As Members of the pro-democracy camp, we insist that these guidelines should have be legally binding and should be passed by a democratic legislature, so as to ensure that the relevant requirements will not be changed casually, still less be manipulated or decided unilaterally on by the hegemonic executive that has no legitimacy. For many years, the pro-democracy camp has criticized the Government for its lack of legitimacy and that is why we hope that the Town Planning Ordinance we believe that for the past several decades, this piece of legislation has basically been biased in favour of consortia and has given rise to opportunities in the collusion between Government and business and the transfer of benefits, thus giving the Government the opportunity to deprive ordinary members of the public and small property owners of their rights through the manipulation of the town planning process and the relevant requirements, so as to transfer interests to plutocrats and hegemonic property developers. It is for this reason that we have persevered and done our utmost in lobbying to bring the town planning standards and guidelines within the scope of legal requirements.

In terms of the rationale, value judgment and thinking, the rationale underlying the arrangements in the competition law is the same as that of the town planning legislation. For example, as there is a piece of legislation prescribing the scope of competition, the Competition Commission (the Commission) will be established, and in town planning, the TPB was also established. The Commission has such great statutory power and the legislation also has clear provisions on some areas, but what matters the most is how the relevant specific regulations are implemented. If the guidelines are prescribed in the form of subsidiary legislation and are passed by the Legislative Council, what problems are there? I am surprised to hear Mr Albert HO say that these things were very subtle.

Criteria and standards cover different areas and as I said just now, there are various detailed provisions in the Environmental Impact Assessment Ordinance, and the same is also true of town planning. The TPB has formulated the relevant standards and guidelines, and the technical guidelines are formulated having regard to each planning decision, for example, what land use is planned for a certain area, or comprehensive studies have to be carried out on certain areas under certain plans. There are numerous examples of this and the guidelines are also innumerable. Members can access the Internet to take a look and they will find that the guidelines of the TPB are numerous. I will read out several items briefly, for example, TPB PG-NO. 2B refers to Interim Planning Control on Service Apartment and TPB PG-NO. 5 refers to Application for Office Development in Residential (Group A) Zone under section 16 of the Town Planning Ordinance. I do not think it is necessary to pass these guidelines in the form of subsidiary legislation but guidelines can be classified into many levels and can be very detailed. For example, in a large area under a District Council, very detailed guidelines on the land use requirements of each small area can be prescribed. These guidelines can be decided by the TPB and guidelines on planning blueprints or the land use of some areas can be prescribed. This is all very reasonable.

Deputy Chairman, a headcount please.

DEPUTY CHAIRMAN (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.

(THE CHAIRMAN resumed the Chair while the summoning bell was ringing)

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): Chairman, I will go on with my speech. Regarding the operation of the Commission and how the ordinance will be

implemented, the relevant guidelines, whether they are called "codes of practice", "operational guidelines" or "technical guidelines", can actually be drawn up more broadly and do not necessarily have to be made in a very detailed manner. As some Members said when expressing their concern, if such codes or guidelines are made in a very detailed manner, just as the way that certain technical memorandums are made, they may not be admitted as evidence or relevant legal provisions in court.

Let us look at the legislation on environmental protection. The technical memorandums as provided for in the legislation are so detailed in their contents that they cover operational rules in various aspects, such as approval to apply directly for an environmental permit, material change to a designated project or the environmental impact of certain projects, the issue of environmental permits, and so on. Very detailed stipulations are made in these respects, and the stipulations are also part of the legislation.

Therefore, if Members are concerned that it may not be appropriate to set out certain provisions in detail, why did they not oppose back then the incorporation of the technical memorandums on the environmental impact assessment procedures into the Environmental Impact Assessment Ordinance? We supported or demanded back then that the rules on how the legislation would be implemented should be made by way of subsidiary legislation for an important reason, which is to ensure that the committee concerned or the law-enforcement agency will enforce the legislation in an open, just and informed manner. It is because if these rules are not stipulated as legal provisions or on the statute book and as the public are completely uninformed of the rules, in the event of abuse of powers by a relevant department, there is often no objective criteria to consider, assess or challenge the acts of certain departments.

In this connection, I think this proposal made by Mrs Regina IP As a person who is very experienced in administration, she absolutely understands and is capable of foreseeing that this new competition law will involve important aspects and affect the interests of many communities and corporations. Without objective parameters, the Commission can connive at and shield certain industries, or it can, in the face of pressure from certain consortiums and the Government, enforce the law using a target-specific and selective approach. (*The buzzer sounded*) Therefore, it is very important to objectively provide for the guidelines by way of subsidiary legislation.

CHAIRMAN (in Cantonese): Mr Albert HO, this is the second time that you speak.

MR ALBERT HO (in Cantonese): Chairman, if we study the Bill carefully, we will find that the word "guidelines" does not only appear in clause 35, it is also mentioned in a number of subsequent clauses, such as clauses 37 and 38.

Clause 37 stipulates that guidelines can be issued to require that certain procedures must be observed when lodging a complaint with the Competition Commission (the Commission). By the same token, there will be guidelines on investigation. We do not expect guidelines to be prescribed in the form of legislation as the guidelines are specific and pragmatic in nature.

Let us look at clause 35 again. I wish to reiterate that the guidelines are not enabling provisions. Do not think that clause 35 confers on the Commission the power to issue guidelines, thus enlarging its power. It is not the case. The Commission's power shall be regulated by the Ordinance as a whole. The Ordinance is certainly governed by principles and policies as competition is a relatively complicated issue, which falls within the ambit of major policy and involves the operation of the overall market. Hence, even though the enacted legislation is as thick as a book, it only sets out some principles or major policies. How it should be implemented depends on the interpretation of the enforcement officers. Whether their interpretation is right or wrong, it may eventually be challenged in the Court, and the Court's ruling will be final.

Let us refer to clause 35 again. In fact, clause 35 only confers on the Commission the power to formulate guidelines on behalf of law-enforcement agencies and to inform the users. Clause 35(1)(a) is about how the Commission will interpret the relevant provisions and give effect to the provisions in future. In other words, the guidelines will tell us how the relevant provisions are interpreted and be given effect. As I have said, first of all, the Commission's interpretation will never override the law or the Court's judgment. The Court may eventually rule that the Commission is wrong. Secondly, the Commission will exercise self-restraint. Once the Commission has made its interpretation clear and if it runs counter to the guidelines announced, the Commission may have to face judicial review since the public have expectations of and rely on the guidelines issued. For example, if the Commission has misled a

law-enforcement agency to interpret the law in a certain way, and the agency was subsequently sued for its action based on its interpretation of the law, the agency can refute by saying that the Commission has been misleading, and the law cannot be enforced because of that. The law can only be enforced after the guideline has been amended. Protection is thus provided to the users who have the right to say that they have been misled. This is the first point.

Secondly, as I have just mentioned, the guidelines very often contain some interpretations, based on which the users have made some actions. Later, the Court may rule that such guidelines are wrong, and the Court, that is, the Tribunal, may impose penalties on the users. In imposing penalties, such as the level of fines, the Tribunal may consider the fact that the user has been misled into taking such acts. The user or the person being complained against can defend that his interpretation is justified because that is based on the Commission's interpretation, and that he can cite the guidelines of the Commission as the justification for his defence or his request for lenient penalties.

In summing up, the actual effect is to limit the powers of the Commission rather than expanding them. However, some Honourable colleagues may query why the enforcement policy is not enacted into law. Theoretically speaking, it is feasible. You may set out all the possibilities. But if you do Chairman, we can make reference to the guidelines in other codes of practice. I have cited several examples. Take the guidelines in the Sex Discrimination Ordinance as an example. They are issued to chambers of commerce and schools. For guidelines regarding family status or race discrimination, they contain numerous real-life scenarios explaining what to do in certain circumstances. Those real-life cases cannot be written down easily in legal provisions. Nor should they be. When you have read those real-life cases, you will understand why I should build one more staircase, or why this student should be given one more chance to sit for the examination under certain circumstances. Therefore, it is not easy or appropriate to prescribe these guidelines as legal provisions.

All in all, if we really are to raise a strong request, I am afraid we have to set out various possibilities and quote large amount of specific principles. In other words, the so-called technical as well as practical principles should also be set out. I am pretty sure that the thickness of this guideline may be five times that of the content of this Ordinance. If it turns out this thick, I really have no

idea how much the compliance cost will be. The industry indicated that the compliance cost has been very high. If another guideline is to be compiled in future, the situation will be even more complicated. No matter how the provisions are written, there will always be disputes because the provisions cannot resolve all problems. Disputes will arise whenever the guidelines are applied.

Thus, we can only formulate the most important policy principles. After that, the Commission will tell us how it interprets and gives effect to the provisions through the guidelines. As to whether it is fair and ties in with the spirit of the legislation, it is for the Court, which serves as the gatekeeper, to decide. There will certainly be many interactive processes and that further amendment will be made to the legislation in future. From the previous parts of the Bill, we can see that subsidiary legislation is necessary in many aspects. The so-called block exemptions for the first and second conduct rules also require legislation.

I will never lax in matters requiring legislation. We are duty-bound to do so. However, many experienced Members also know that matters concerning practical policy can hardly be resolved through legislation. I have to reiterate that we should not misinterpret the relevant clauses as an expansion of the Commission's power. From the practical perspective, the Commission's power has actually been confined to a certain extent. If you have stated something clearly, then you must act accordingly. If you are misleading, you will be subject to judicial review.

DR MARGARET NG (in Cantonese): Chairman, I fully concur with what Mr Albert HO has said, and I just want to respond briefly to the accusation made by some Members. They queried why Members from the democratic camp, who have all along been defending the powers of this Council in enacting legislation, have given up such powers in this respect, and considered that the relevant guidelines should not be passed in this Council.

Chairman, I wish to give some examples. The major principle behind is simple enough. When we say that we want to defend our duties and powers in enacting laws, it does not mean that everything should be passed through the legislative procedures. This is the first point. Earlier, we have a subcommittee

formed under the House Committee to study subsidiary legislation or how subsidiary legislation should be dealt with. If Members had joined that subcommittee or read the report submitted by that subcommittee to the House Committee, they would know that we had studied the issues of when the primary legislation should be enacted to safeguard certain powers or impose certain restrictions, and when subsidiary legislation should be enacted, or when codes of practice with no legal effect, as well as guidelines should be prescribed, and so on. There are clear provisions. So the principle is not to prescribe everything in the form of legislation, for this is not in the best interest of the public, nor is it the best way to safeguard our right to enact legislation. This is because the approach on enacting legislation is entirely different from deliberating on some codes of practice, codes of conduct and guidelines. Chairman, this is a question concerning the difference in the nature of the subject matter concerned, and it has nothing to do with giving up or not giving up any powers.

Second, as many examples are involved, hence in our consideration of passing a law, or in the examination of a bill, we have to be very careful about the issue concerning delegation, this is, should subsidiary legislation be enacted or should provisions be made in the primary legislation. This is the first barrier. The second barrier is, when matters in the bills are not prescribed in the form of subsidiary legislation, we have to consider if such approach is a safe measure. We have to consider in the light of the primary legislation. If enactment of legislation is not required, then is it necessary to delegate powers? We have to base our discussion on the actual contents of the Bill.

Chairman, such discussions should be held in the Bills Committee. Regarding the provisions of clause 35, I believe that the issue of whether the provisions should be prescribed in the form of guidelines or subsidiary legislation should have been discussed thoroughly in the Bills Committee. Hence, this issue should not be discussed in this Chamber.

Of course, I understand that Members can have divergent views on this issue. In the Bills Committee, while some Members may think that legislation is needed, some may think otherwise. For Members who think that legislation is needed, they may propose amendments, as they have the right to do so. However, the fact that we do not support this view does not imply that we give up our right to enact laws.

Chairman, I believe that matters referred to in clause 35 should be handled by guidelines. The reason is that we understand what issues are to be handled by the Competition Commission (the Commission). The Commission will handle issues relating to the operation of the market, the economy and business activities. I hope that such matters can be handled in the form of guidelines as an interactive process will be involved. If guidelines are to be adopted, instead of making a decision based on the political stand and ideologies of Members, the trade can tell the Commission their actual situation in the process. They can tell the Commission about the contents of the guidelines. If it is found that some provisions in the guidelines may sound good, but they are impractical or they are not feasible in real practice, the trade, in particular, small and medium enterprises, can voice their views.

Chairman, we have handled many laws and such examples are numerous. In our view, if the provisions are prescribed in the form of guidelines, the sectors and stakeholders affected can easily voice their opinions. Also, the language used in these guidelines is not legal language, and people who read the guidelines do not intend to read legal provisions. Hence, from the perspective of legislation, there may be some provisions that are not clearly written, but from the practical perspective of the trade, the provisions are clear enough. Sometimes, on the contrary, the legal provisions are all right, but in real practice, problems will arise. Such circumstances can be handled by guidelines.

Mrs Regina IP has mentioned anti-terrorist law in her earlier speech. Mrs IP can hardly forget the anti-terrorist law. *(Laughter)* I do not want to talk about events that had passed. To my regret, I was not in the Chamber when she mentioned this point. However, I understand that Mrs IP said that there was a code under the anti-terrorist law which had to be scrutinized by this Council.

I would like to point out two things. Why should there be such a requirement for that particular code? If my memory does not fail me, this is because enforcement officers are empowered to seek information from the public, and the code stipulates that the public have the responsibility to provide information. At that time, we worried about the exercising of this power by law-enforcement agencies. While we knew that we could not refuse to empower the authorities to do so because they had to combat terrorism, we were very concerned as to how the law was to be enforced, especially on how interrogations and examinations should be carried out on ordinary members of the public or even on minors. So we were very worried about how the law would be

enforced. That is why we proposed that the code should be first deliberated by this Council. Two special features were involved: first, why this Code had to be submitted to the Council for examination? That was because during the legislative process, both parties agreed to such an agreement when the Bills Committee examined the bill. Secondly, the matters concerned did not involve market operation and the guidelines did not have to be amended frequently. Furthermore, the code also involved the handling of minors.

Therefore, I think the two pieces of legislation are completely different. Regarding the code on anti-terrorist, we have to take note that the code should be read by person being questioned, and hence it should be written in a language that is easily comprehensible to ordinary members of the public.

Chairman, we should, in the light of different circumstances, decide whether the matters should be dealt with in the form of subsidiary legislation, or in the form of guidelines which are not legally binding or not of a legal nature? Actually, there are some very clear targets. I think the objectives are clear. I think the present practice is entirely in line with the principles discussed in the subcommittee. So we have full justifications in not agreeing with the amendment proposed by Mrs Regina IP and this is also consistent with the established practice.

I note that Dr LAM Tai-fai is very concerned about this issue. Of course, I understand that the sectors are very concerned about the guidelines. But if you ask me, I would say that the guidelines will benefit the sectors unless they think that by adopting this practice, it can stop the implementation of the legislation, which in fact will be beneficial to them. Basically, they oppose the legislation. Of course, this will be another idea.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Mrs Regina IP, this is the fifth time that you speak.

MR LEUNG KWOK-HUNG (in Cantonese): I request the ringing of the bell. How spectacular this debate is.

CHAIRMAN (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.

MRS REGINA IP (in Cantonese): Chairman, will it be my turn to speak again after the bell had been rung?

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Mrs Regina IP, please go on.

MRS REGINA IP (in Cantonese): I will only say a few words in brief. I wish to clarify that my amendments do not seek to turn the guidelines into subsidiary legislation. Chairman, I am glad to find out that there are colleagues who wish to listen to my speech.

Chairman, let me give a brief response. I wish to clarify that my amendments do not seek to turn the guidelines into subsidiary legislation, but only to require their approval by the Legislative Council. This is a duty that Members should perform. With regard to such an important piece of legislation, we should handle it seriously, and we must not act like the Chief Executive Officer of the Consumer Council — They have certainly promoted this law vigorously, thinking that any competition law being enacted is better than none and it is better to be fast than slow. However, it is not always good to be fast in everything. We support the Bill proposed by the Government, but we must consider whether it is truly beneficial to society and the economy, and we should not do it purely to support the platform of Chief Executive Donald TSANG in 2007. I, therefore, urge colleagues to pay attention to this point. Thank you, Chairman.

CHAIRMAN (in Cantonese): Dr LAM Tai-fai, this is the second time that you speak.

DR LAM TAI-FAI (in Cantonese): Chairman, Mr Albert CHAN said in his speech earlier that the People Power is practical in making comments. I do not wish to rashly jump to a conclusion on this point. But I wish to tell Members that I always speak according to the facts, and I never make up anything out of thin air. Every speech of mine is a reflection and expression of views based on the actual circumstances.

As I pointed out when I spoke for the first time earlier, why do I feel a sense of uneasiness and anxiety if the future guidelines and the amendments will only have to consult the Legislative Council but not approved by us? I am also being practical, and I am expressing my views based on the actual situation. This is not repetition; I absolutely have not repeated what I have said. I cited some examples earlier, and I will cite some others later to prove that I am practical in what I have said.

Chairman, why do I say that the guidelines must be approved by this Council? What is the purpose of the guidelines? As far as I understand, the guidelines serve the purpose of helping members of the community, members of the public, as well as the industrial and commercial sectors (especially SMEs) understand the law, the definitions therein, and the details of the provisions, so that they will know how to comply with the provisions and how they should follow the guidelines in their business or operation. What will happen if they are not clear about the guidelines or if they do not understand or comprehend them? They will easily fall foul of the law inadvertently, and they will easily be caught in crisis though they are innocent. For instance, they will have to pay a large sum to engage lawyers in lawsuits, and their reputation will be at stake anytime. Reputation that has been built up with decades of painstaking efforts will be tarnished when the company is alleged by the Commission to have breached the rules and failed to comply with the guidelines, and the company will even be taken to task for not reading the guidelines carefully. Why do I demand that the guidelines be approved by the Legislative Council? The reason is that the guidelines are unclear and ambiguous. As some Members said earlier, how should "market" be defined? What are the details of the guideline? How should "market power" be defined?

As I said yesterday, it is most laughable that there is not even a guideline on the word "competition" as in the Competition Bill. What does competition mean? Healthy competition and vicious competition are different.

Competition is different in many ways. Competition in a small market is different from that in a big market. Vertical competition and horizontal competition are different. It is precisely because these guidelines are full of uncertainties that I demand that not only should they be tabled to the Legislative Council for consultation with Members, they must also obtain our approval before coming into operation. Otherwise, with only half-baked knowledge of the guidelines, who will be made to bear the brunt? Those who will bear the brunt are definitely the public, the industrial and commercial sectors, and SMEs. The overall economic development of Hong Kong will also be adversely affected.

Why is it better to require the approval of the Legislative Council than simply listening to the views of this Council? There are now 60 Members of the Legislative Council — The number will increase to 70 in the next term, and let us take the current composition of this Council as an example. Of the 60 Members, 30 are returned in direct elections and 30 are returned by functional constituencies (FCs). The FCs alone already cover 28 sectors, and they represent a large pool of people who are capable and resourceful — perhaps with the exception of me. Everyone has his or her own views, and everyone will exercise care in casting a vote on the legislation. The legislation or the guidelines should have credibility and legitimacy after consultation with us and put to vote in this Council. While the image of the Legislative Council is said to be getting worse now, the "viewership" is still on the high side. If the provisions are subject to the approval of the Legislative Council, it will help abating the impression that the legislation is made behind closed doors and decisions are made by people in the same circle. Therefore, if the approval of the Legislative Council is required, it will benefit the industrial and commercial sectors as well as consumers in Hong Kong. I do not know why there would be people opposing it. The only demerit is that apart from putting forward our views, we Members may have to stay behind to cast a vote on them one by one. But this is our duty and our job, and this should be all fine. So, we cannot say that consultation is enough simply because we are lazy or we do not want to waste time on voting.

Chairman, speaking of consultation, why do I consider the guidelines very important? I often talk about SMEs. What is the definition of SMEs in the current guideline? For manufacturing enterprises, SMEs refer to enterprises with fewer than 100 employees, while non-manufacturing enterprises with fewer than 50 employees are regarded as SMEs. As I said in an oral question that I asked previously, this definition is very much out of line with the current economic development in Hong Kong because 98% of all enterprises in Hong

Kong are SMEs and of these 98% of enterprises, over 90% have fewer than 10 employees, which can be referred to as "micro-enterprises". As I have always said to the Government, in order to implement target-specific measures or measures targeting specific problems to assist enterprises in their development, it is necessary to provide clear definitions as a first step, such as what medium enterprises, small enterprises or micro-enterprises should mean. Similarly, in our Motherland, there is also a law on the promotion of small and medium-sized enterprises, which draws a distinction among micro-enterprises, medium enterprises and small enterprises

CHAIRMAN (in Cantonese): Dr LAM, are you straying a bit from the subject?

DR LAM TAI-FAI (in Cantonese): No, I am not. I wish to explain the importance of providing definitions in the guidelines. If the guidelines are not submitted for our approval, the Secretary will say that this is all that he can do, and as he said last time, it is not necessary to further amend the guidelines because neutrality will be compromised if further amendment is made to them, which will then open up loopholes for tax avoidance by SMEs. I think you will recall that I put this question to the Secretary at that time and the Secretary did not give me an answer. I think you have not forgotten it, have you? Should he really make such a remark, there would be no way for me to further question him, and I would not be able to vote against the guidelines, nor could I agree to them. I would only be rendered speechless then, and all I could do would be to sit down and say, "I have given you my view. I can do nothing if you do not listen to it."

Therefore, I think given that there are so many loopholes in the competition law and the uncertainties in the guidelines, since the Commission will be given this responsibility and as we are unclear about the composition of the Commission, and we have no idea about the proportions of the sectors represented in its composition, nor do we have a clear picture of how many members from the industrial and commercial sectors are included in the membership of the Commission, and on the other hand, as it is evident that this competition law will strangle the entire SME sector as well as the industrial and commercial sectors in Hong Kong and play a pivotal role in the survival and the interests of these sectors, why can we not think about ways to deal with this?

Therefore, Chairman, I strongly maintain that I strongly support Mrs Regina IP's amendments. As regards this legislation and the guidelines, not only should we Members of the Legislative Council be consulted, it is also necessary to obtain our approval before they can come into operation. Chairman, I so submit.

MR FRED LI (in Cantonese): Chairman, I have to speak in response to Dr LAM Tai-fai and Mrs Regina IP.

Just now, Dr LAM Tai-fai pointed out that he had no idea who would sit on the Commission upon its establishment. As such, he should support the amendment proposed by Mr LEUNG Kwok-hung because at least there will be people representing the interest of SMEs and consumers. Mr LEUNG's amendment is very clear. I hope Dr LAM will support it.

As for Mrs Regina IP, I do not quite understand the comments she made just now. Concerning the guidelines, if they are not subsidiary legislation yet they must be approved by the Legislative Council, what category should they be classified? That is impossible. Having been a Member of this Council for such a long time, I have never heard of anything not prescribed in the form of legislation or not having legal effect, yet it must be passed by the Legislative Council and endorsed by Members. Motions moved by Members for debate are exception, because it has been expressly stated that they have no legal effect.

Even the motion jointly signed by 23 pan-democratic Members to impeach the Chief Executive will carry legal effect because it is proposed in accordance with the procedure, and is in full compliance with the rules. Hence, if the guidelines must be passed by this Council, they must be prescribed in the form of legislation or subsidiary legislation. Just now, I heard Mrs Regina IP say that she did not request to make the guidelines subsidiary legislation, but she requested that the guidelines be passed by this Council. I do not understand what she meant.

This is a very serious matter. There must be no ambiguity or mistake. Having been a Member for such a long time, I have never heard anything like this before. I wonder if anyone will clarify this point. If the guidelines are passed

by this Council and carry legal effect, they must be prescribed in the form of legislation or subsidiary legislation. I cannot see any other ways to deal with it.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MRS REGINA IP (in Cantonese): Chairman, I only wish to respond briefly to Mr Fred LI's query. My amendment was confirmed feasible in law in consultation with the legal advisor of the Legislative Council before it was proposed.

I am not as experienced as Mr Fred LI in being a Legislative Council Member as I have been a Member for only three-odd years; though I am less experienced than him, I have indeed sought legal advice. Hence, I cannot accept the comment that my request for the guidelines to be debated and passed by this Council before the first and second conduct rules may take effect has no legal basis.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR WONG YUK-MAN (in Cantonese): Chairman, I also wish to respond to what Members have said. I thank Mrs Regina IP for giving us an opportunity to "exchange fire". With regard to subsidiary legislation, guidelines and the ordinance, Members have already

CHAIRMAN (in Cantonese): Mr WONG, please do not stray from the subject.

MR WONG YUK-MAN (in Cantonese): the many very experienced barristers with us here can express their views.

Common law cases have reflected the principles of the law but the wording of the Ordinance may sometimes be abstract and vague. Therefore, it is very difficult for ordinary people to understand from the Ordinance the true meanings of the conduct rules. So, it is against this backdrop that the Bill has provided that the Competition Commission (the Commission) shall draw up guidelines on these two conduct rules in future. However, as the legal intent will change following the developments of common law and our understanding of the law will change with a certain common law jurisdiction and some new case laws, guidelines can, therefore, allow more flexibility than the Ordinance or subsidiary legislation, and the use of guidelines is a more appropriate option.

However, members of the community have only a hazy idea about the provisions of the Ordinance and may have concerns about them, and as the guidelines will help the Court understand the meanings of some expressions in the Bill, I think the guidelines must be discussed and approved by the Legislative Council. As Mr Ronny TONG has said, the guidelines under the EU's competition law could be approved only a decade after the law was brought into operation. But if the public do not understand the Ordinance, what will happen in these 10 years? Therefore, we cannot tolerate the Legislative Council passing a law that the public do not understand. The Ordinance requires the Commission to consult the public in formulating the guidelines but it has neglected the details of how consultation should be conducted. If the guidelines require discussion and approval by the Legislative Council, there will be discussions on these guidelines in society. Dr LAM Tai-fai was very smart just now. I share his views, but I will not repeat what he has said.

When the guidelines are discussed and approved by the Legislative Council, there will be discussions on the guidelines in society. This will help improve the guidelines and enable the public to have a better understanding of the guidelines. How important it is to have a good understanding of the guidelines, especially to small and medium enterprises and business operators.

Mr Ronny TONG has put forward the view that the detailed rules should not override the Ordinance. This, we agree. But their discussion and approval by the Legislative Council will not cause these rules to override the Ordinance, right? Forgive me for being ignorant as I really do not understand why this can stand to reason. He said that there is a chance for the guidelines to be judged by court as unconstitutional. Their discussion by the Legislative Council may

enable breaches of the law to be detected early and hence rectified. Even if the provisions are unconstitutional, it should not be a big problem given that the guidelines have no legal effect.

Mr Ronny TONG said that the EU approved the guidelines only a decade after the competition law came into operation, and this only makes us believe and support more strongly that the guidelines should come into operation only after they have been discussed by the Legislative Council. So, from the contentions over this issue, particularly as we can see today that many Members have talked about this provision, it is evident that there is indeed a problem.

Therefore, disregarding whether Mrs Regina IP aims to arouse discussions or to throw out a sprat to catch a mackerel, her amendments will still be voted down, because not even the democratic camp is supportive of her amendments and as the other group of Members does not support her either, the results of separate voting on her amendments will be horrible. As I think about this more carefully now, I cannot really tell to which camp she actually belongs. The voting result may show that her amendments are negated by an overwhelming majority of votes. But Chairman, it strikes me as strange that while the amendments only demand that the Legislative Council should or be empowered to scrutinize and amend the guidelines, they are nevertheless going to be negated by an overwhelming majority of votes in both groups of Members in this Chamber. Perhaps Secretary Gregory SO has really done a lot of work, though he does not seem to have done so, whereas Mrs Regina IP may have done less. I have read her amendments in detail and found that there is a paragraph in the English version which is missing in the Chinese version, and she did not respond to me on this point when she spoke earlier. If she still has time to speak, I hope that she can respond to and explain this point. Is this omission in the Chinese version the fault of her assistants, or does it actually carry the same meaning as that of the English version? With regard to her amendments in general, are they proposed to amend the legislation for the same purpose, or are they in any way different in spirit?

We have mentioned our position on the amendments earlier, but I wish to speak further on one or two points. For instance, with regard to the amendments to clauses 1(2) and 1(3) which provide that the relevant provisions of the Ordinance can come into operation only after the guidelines on the two conduct rules have been approved by the Legislative Council, I support these amendments in principle. This arrangement will put a bit of pressure on the Government and

the Commission, driving them to complete the drafting of the relevant guidelines as soon as possible and seek support and approval from the Legislative Council, but this may carry forward the contentions on the Competition Ordinance to the next term Legislative Council.

The Secretary very much wishes that the Bill will be passed expeditiously and smoothly because he considers that this legislation is of great importance to Hong Kong, which we very much agree. It is precisely because this legislation is very important to Hong Kong that it is all the more necessary to identify the details and problems. There is often the view that legislation should be passed first and amendments can be made to it in future. But what happens is that there is usually no amendment made to it in future. Do Members see what I mean? This has always been the case. Why do I not raise problems of "the devil being in the details" for thorough discussion early? Despite extensive discussion by the Bills Committee, when they are tabled before this Council here, there are other Members, such as Mr Albert CHAN, who may not have taken part in the work of the Bills Committee. Therefore, I think there is no harm to discuss the details thoroughly.

The two conduct rules are very important. Why should the Legislative Council be denied of information and the right to intervene? This is grossly detestable. We, being Members of the Legislative Council, are exercising our powers, and this does not involve anything about overriding the law, and this is not like anything suggested by some Members who said earlier that if guidelines require approval and discussion by the Legislative Council, what are they if they are not subsidiary legislation? I do not understand these things, but I think as the two sets of guidelines are very important, the Commission must not be given a free hand to do it on its own.

Besides, I guess that some people may be concerned that if the approval of the Legislative Council is required, the current composition of the Legislative Council, which is unbalanced and taking sides, will mean that they cannot take any advantage. After the establishment of the Commission in future, will the Commission not be unbalanced? There will be many people from the democratic camp in the Commission, and these people may take up a majority of its membership. Is this possible? This is possible, so long as a deal is made. Gregory SO, have you decided on the candidates? It makes no difference anyway.

What if these people here will become members of the Commission and be made responsible for making these guidelines, and what if these people will take up a majority of the membership of the Commission? Will this happen? If the Legislative Council is given the power to scrutinize, handle and approve these guidelines, and if there is concern that this Council is unbalanced and that this will adversely affect the formulation of the guidelines, how can there be guarantee that the composition of the future Commission will be fair, just, open and diversified? Can there be this guarantee? There is no way to guarantee this.

Since no such guarantee can be given, I think the Legislative Council should scrutinize these two sets of guidelines and even be empowered to examine and amend these guidelines, and this can, in turn, reflect the powers of the Legislative Council to enact legislation and monitor the implementation of legislation.

Chairman, I request a headcount.

CHAIRMAN (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Excuse me, Chairman, I thought Mr Abraham SHEK raised his hand first.

CHAIRMAN (in Cantonese): According to my record, no other Member requested to speak.

MR ALBERT CHAN (in Cantonese): Excuse me, Chairman, I did not hear you.

CHAIRMAN (in Cantonese): Mr Albert CHAN, you may speak now.

MR ALBERT CHAN (in Cantonese): OK.

Chairman, first of all, I would like to thank Mrs Regina IP for her comment that her amendment is not subsidiary legislation, which I understand. When I mentioned subsidiary legislation just now, I was referring to the calls made in the past in connection with many ordinances. For the pan-democratic or democratic camp, particularly the radical democratic camp, it is more appropriate for provisions to be made in the form of subsidiary legislation to monitor public behaviour, especially when provisions of ordinances are involved.

As regards Mrs IP's proposal of requiring the Competition Commission (the Commission) to submit the guidelines to the Legislative Council for discussion and endorsement, the guidelines are certainly not subsidiary legislation under the existing Ordinance. Nevertheless, if the Commission is given an opportunity to submit its internal or established conduct rules to the Legislative Council for discussion and endorsement, it is definitely and absolutely more progressive and desirable than having the rules being endorsed in closed meetings by the Commission unilaterally. Hence, I do not quite understand why pan-democratic Members oppose this progressive approach, unless they blindly trust the representativeness and authoritativeness of the Commission and think that the transparency of the Commission is satisfactory. Nevertheless, I very much hope that pan-democratic Members can look closely at the *modus operandi* of all these statutory bodies in Hong Kong over the past many years as well as their existing *modus operandi* and defects.

Given its *modus operandi*, the Commission will definitely be controlled completely and led by the Government which exercises executive hegemony, though one or two pan-democratic Members might be appointed to the Commission. This is like, after the Democratic Party had been admitted into the Liaison Office of the Central People's Government, some of their members have been appointed to the Airport Authority and many other statutory bodies for sharing of political profit, right? I have absolutely no doubt that some members of the Democratic Party will sit on the Commission, but does the presence of one or two such members imply that the prescribed and statutory duties of the Commission can meet public aspirations, and the operation of the Commission

can comply with the principle of fairness and impartiality? I believe this is certainly not the case. Like the case of the existing Urban Renewal Authority (URA), quite a number of people affected by urban renewal are still constantly criticizing the URA for its collusion with businessmen and transfer of benefits in favour of major plutocrats, even though there are two so-called pan-democratic members in the URA.

Hence, if a mechanism is put in place, and as proposed by Mrs Regina IP, the guidelines referred to in clause 35 can then be submitted to the Legislative Council for discussion, they will definitely be made open to the public when given the opportunity to be discussed and endorsed by the Legislative Council. I have recently written to certain government departments and Policy Bureau responsible for hygiene and other related policies, asking for information concerning the funding allocation or certain administrative guidelines, but my request has been turned down on the ground that such information is classified as internal departmental guidelines and cannot be provided to Members. Can the Secretary respond later whether the guidelines referred to in clause 35 the Bills Committee had asked, during its discussion, whether the guidelines are for internal use by the Commission or will they be disclosed to the public in future?

Furthermore, as Members are well aware, the guidelines formulated by these statutory bodies are very often biased in favour of the executive departments in a lopsided, I emphasize lopsided, manner, because the pattern of thinking and operation of the entire Government, particularly the guidelines formulated by the senior echelon of the Government, is to facilitate its own management rather than members of the public. Neither will the guidelines respect the public's right to know and participate. Very often, the guidelines only serve to facilitate the administration of their departments. The relevant procedures and rules are formulated in accordance with the guidelines to ensure that the administrative departments can protect the relevant personnel from legal challenges in exercising certain powers. Hence, if such guidelines are formulated without being examined, monitored and discussed by another body other than the Commission, and passed behind closed doors, the corrupt practice in the past, as I pointed out just now, will definitely develop.

Why is it not desirable for the guidelines formulated by the Commission to be submitted to the Legislative Council for discussion and scrutiny, as proposed by a Member? I hope my friends from the Civic Party and the Democratic Party

can explain to me. "Long Hair", Yuk-man and I no longer belong to the pan-democratic camp. Just now, some Members described us as pan-democrats, but have we not been kicked out of the camp? Given their fierce opposition to Mrs Regina IP's proposal certainly, I might not subscribe to the legal or technical problems mentioned by Members just now. For instance, if the guidelines are drawn up in this manner, they may not be admissible as evidence in legal proceedings. This is purely a matter concerning legal proceeding. But why is it not desirable for the relevant guidelines to be given an opportunity to be scrutinized in this Chamber publicly? What are the offences and demerits that compel Members to raise objection?

As democrats, are we not here to fight for the monitoring of the executive authorities by the legislature? As democrats, are we not here to reveal to the public the relevant public interest? As democrats, are we not here to enable the public to enjoy the right to know about the relevant rules and administrative practices that will affect them, and the Legislative Council to enjoy the monitoring and approval powers? Are these not the demands made by the so-called pan-democrats (we are no longer pan-democrats)? Has the situation been changed such that only three radical democrats are sticking to their position of ensuring that no concessions are made regarding the monitoring of the executive authorities by the legislature, while the remaining 20 Members can give up this basic right of democracy? Hence, I hope people sitting in front of the television can witness this sort of ridiculous political developments and political anomalies of such absurdity, and see clearly for themselves the variables that have emerged from the current political developments, as well as some unimaginable situations.

Chairman, I would also like to say a few words explaining why I said it was even better, if possible, to prescribe the relevant rules in the form of subsidiary legislation. The several barristers from the Civic Party should know very well that a series of litigations were initiated earlier under the Environmental Impact Assessment (EIA) Ordinance. Being a supporter of those actions, I have repeatedly condemned on their behalf, on various public occasions, those people taking political advantage of them. Why is it possible for ordinary citizens to challenge the authority or the Government in litigations involving hundreds of millions or even tens of billions of dollars in order to defend their limited basic right? It is because the subsidiary legislation under the EIA Ordinance has clearly spelt out certain procedures and parameters so that everyone, regardless of

his identity, status and asset, is entitled to fight for his interest within the scope of the Ordinance. The scope of the Ordinance covers the subsidiary legislation and the technical memorandum, which is considered as part of the subsidiary legislation. The procedures and fundamental work in connection with certain public acts of the Government are clearly spelt out in the legislation. Any person who considers that the acts of the Government or of the consultant commissioned by the Government have posed damage to him or that the Government has failed to address the interest of the public in considering certain tasks, can raise legal challenge against the Government. Subsidiary legislation is important in the sense that legal or statutory powers are formally given to all citizens, regardless of their status.

However, if we only have guidelines, and the guidelines are to be passed only by the Commission (a very important statutory body) unilaterally; and given that the guidelines are not legally binding, how can they protect public rights from being infringed upon? Even if members of the public are being infringed upon, they cannot challenge the Commission since the guidelines are used for internal reference only, right? According to Mr Albert HO, these guidelines will not give the Commission more power. Certainly, we know that the powers of the Commission have been constrained by the law, and according to the legal provision, the Commission can prescribe the guidelines within its scope of power, and carry out its work as regulated by the guidelines. Nevertheless, if the guidelines can be turned into subsidiary legislation (my request is higher than the one made by Mrs Regina IP), just like the relevant rules and technical memorandum under the EIA Ordinance, the protection for public interest will be recognized and provided for by the law. In this way, the Commission will not behave recklessly and outrageously, practicing favouritism or being partial; the executive department will refrain from abusing powers, engaging in hegemony or disregarding the aspirations of the public. Like the EIA Ordinance, detailed guidelines will be formulated.

Certainly, I absolutely understand and share the comments made by some so-called pan-democratic Members that the guidelines, if prescribed in the form of legislation or subsidiary legislation, will be voluminous. However, as in the case of the EIA Ordinance, the relevant rules and memorandum will be part of the legislation. As there is a need to provide for, in the legislation, the relevant requirements, rules and regulations, as well as technical memorandum, the relevant departments are compelled to set out clearly the scope of public conduct, as a statutory requirement in law. Public conduct has to be regulated through

legislation because we do not trust that government departments can exercise self-restraint and their power reasonably. The purpose of the law is to regulate public conduct. Otherwise, what is the point of enacting legislation and prescribing a competition law? If large consortia can act according to their conscience in conducting business, why is there a need to enact laws? If there is no collusion between Government and business, if there is no problem with "corrupt TSANG", the Democratic Party will not urge "corrupt TSANG" to step down, right? Indeed, as government officials are untrustworthy, and their public conduct is not to be trusted, we have to stipulate legal requirements to constrain and sanction this Government which exercises executive hegemony.

Hence, the amendment proposed by Mrs Regina IP for discussion and endorsement by the Legislative Council is actually neither fish nor fowl, but it is still better than nothing. It is nonsense and absolutely ridiculous to blindly trust that the rules prescribed by the Commission can meet public aspirations. Over the past two decades or so, we have seen the Government's repeated abuse of power, a young girl was raped by a policeman inside a police station, and there are repeated cases of corruption, why does the democratic camp suddenly trust the Commission? I really do not understand why they trust the Government all of a sudden. They must have become royalists or the ruling party, right? I really do not understand. On the one hand, I have not participated in the work of the Bills Committee. Why do they trust the Government?*(The buzzer sounded)* I hope to hear their explanation.

CHAIRMAN (in Cantonese): The meeting is now suspended and will be resumed after the Finance Committee meeting concludes in the afternoon.

12.48 pm

Meeting suspended.

8.36 pm

Committee then resumed.

NEXT MEETING

CHAIRMAN (in Cantonese): The meeting is now resumed.

I now adjourn the Council until 11 am sharp on Wednesday 13 June 2012.

Adjourned accordingly at twenty-three minutes to Nine o'clock.

Annex I

Competition Bill

Committee StageAmendments moved by the Honourable Mrs Regina IP LAU Suk-ye, GBS, JP

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting “This” and substituting “Subject to subsection (3), this”.
1	By adding— “(3) Sections 6 and 21 may only come into operation after the guidelines referred to in section 35 have been approved by the Legislative Council under section 35(4A)(a).”.
3(1)	By adding “if the conditions in subsection (4) are fulfilled” after “statutory body”.
3	By deleting subclause (2).
3	By deleting subclause (3) and substituting— “(3) In this section, a reference to a statutory body includes an employee or agent of the statutory body, acting in that capacity.”.
3	By adding— “(4) The conditions referred to in subsection (1) are— (a) the statutory body is not engaging in an

economic activity in direct competition with another undertaking;

- (b) the economic activity of the statutory body is not affecting the economic efficiency of a specific market; and
- (c) the economic activity of the statutory body is directly related to the provision of an essential public service or the implementation of public policy.”.

5 By deleting subclause (1) and substituting—

“(1) The Chief Executive in Council may, on being satisfied that there are exceptional and compelling reasons of public policy, by regulation disapply the provisions referred to in section 3(1) to—

- (a) any person; or
- (b) any person, to the extent that the person is engaged in an activity specified in the regulation.”.

5 By deleting subclause (2).

5 By deleting subclause (3) and substituting—

“(3) In this section, a reference to a person includes an employee or agent of the person, acting in that capacity.”.

35(1) By adding—

“(aa) indicating the manner in which it expects to interpret the expressions “market” (市場), “market power” (市場權勢) and “substantial degree of market power” (相

當程度的市場權勢) used in this Ordinance;”.

35

By adding—

“(4A) Without limiting subsection (4)—

- (a) before any guidelines are first issued under this section, the guidelines must be submitted to the Legislative Council for approval; and
- (b) before any amendments to the guidelines are issued under this section, the amendments must be submitted to the Legislative Council for approval.

(4B) The Legislative Council may by resolution amend the whole or any part of the guidelines or amendments submitted under subsection (4A).”.

35

By deleting subclause (5) and substituting—

“(5) The Commission must make available copies of all guidelines issued under this section and of all amendments made to them—

- (a) at the offices of the Commission during ordinary business hours;
- (b) through the Internet or a similar electronic network; and
- (c) in any other manner the Commission considers appropriate.

(6) A person does not incur any civil or criminal liability only because the person has contravened any guidelines issued under this section or any amendments made to them.

(7) If, in any legal proceedings, the Tribunal or any other court is satisfied that a guideline is relevant to determining a matter that is in issue—

- (a) the guideline is admissible in evidence in the proceedings; and
- (b) proof that a person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.

(8) Guidelines issued under this section and all amendments made to them are not subsidiary legislation.”.