

**立法會**  
**Legislative Council**

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Tel : 3919 3306

Date : 23 May 2012

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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**Council meeting of 30 May 2012**

**Competition Bill**

**Committee stage amendments**

The Second Reading debate on the above Bill will be resumed at the Council meeting of 30 May 2012. Subject to the Bill receiving a Second Reading, the President has given permission for the following Members, to move their amendments to the Bill, as set out in **Appendices I and II**:

<u>Mover</u>	<u>Appendix</u>
Hon Albert HO	I
Hon Ronny TONG	II

2. As directed by the President, the amendments are attached for Members' consideration.



(Desmond LAM)

for Clerk to the Legislative Council

Encl.

Competition Bill

Committee Stage

Amendment to be moved by the Honourable Albert HO Chun-yan

Clause

Amendment Proposed

New

In Part 1, by adding—

**“5A. Expiry of sections 3 to 5**

Sections 3, 4 and 5 cease to have effect on the third anniversary of the day on which those sections come into operation.”.

## Competition Bill

## Committee Stage

Amendments to be moved by the Honourable Ronny TONG Ka-wah, SC

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting the definition of “statutory body”.
3	By deleting the clause.
4	By deleting the clause.
5	By deleting the clause.
9(1)(b)	By deleting “section 15;” and substituting “section 15; or”.
9(1)(c)	By deleting “; or” and substituting a full stop.
9(1)	By deleting paragraph (d).
24(1)(a)	By deleting “Schedule 1;” and substituting “Schedule 1; or”.
24(1)(b)	By deleting “; or” and substituting a full stop.
24(1)	By deleting paragraph (c).
Schedule 1	By adding— <ul style="list-style-type: none"> <li>“4. <b>Mergers</b></li> <li>(1) To the extent to which an agreement (either on</li> </ul>

its own or when taken together with another agreement) results in, or if carried out would result in, a merger, the first conduct rule does not apply to the agreement.

(2) To the extent to which conduct (either on its own or when taken together with other conduct) results in, or if engaged in would result in, a merger, the second conduct rule does not apply to the conduct.

**5. Agreements of lesser significance**

(1) The first conduct rule does not apply to—

- (a) an agreement between undertakings in any calendar year if the combined turnover of the undertakings for the turnover period does not exceed \$100,000,000;
- (b) a concerted practice engaged in by undertakings in any calendar year if the combined turnover of the undertakings for the turnover period does not exceed \$100,000,000; or
- (c) a decision of an association of undertakings in any calendar year if the turnover of the association for the turnover period does not exceed \$100,000,000.

(2) Subsection (1) does not apply to an agreement, a concerted practice, or a decision of an association of undertakings, that involves serious anti-competitive conduct.

(3) Subject to subsection (4), the turnover period of an undertaking is—

- (a) if the undertaking has a financial year, the financial year of the undertaking that ends in the preceding calendar year; or
- (b) if the undertaking does not have a financial year, the preceding calendar year.

(4) The turnover period of an undertaking is the period specified as such for the purpose of this subsection in the regulations made under section 162A(2) if—

- (a) for an undertaking that has a financial year—
  - (i) the undertaking does not have a financial year that ends in the preceding calendar year; or
  - (ii) the financial year of the undertaking that ends in the preceding calendar year is less than 12 months; or
- (b) for an undertaking that does not have a financial year—
  - (i) the undertaking is not engaged in economic activity in the preceding calendar year; or
  - (ii) the period in which the undertaking is engaged in economic activity in the preceding calendar year is less than 12 months.

(5) In this section—

“preceding calendar year” (對上公曆年) means the calendar

year preceding the calendar year mentioned in subsection (1)(a), (b) or (c);

“turnover” (營業額)—

- (a) in relation to an undertaking that is not an association of undertakings, means the total gross revenues of the undertaking whether obtained in Hong Kong or outside Hong Kong; and
- (b) in relation to an association of undertakings, means the total gross revenues of all the members of the association whether obtained in Hong Kong or outside Hong Kong.

#### 6. Conduct of lesser significance

(1) The second conduct rule does not apply to conduct engaged in by an undertaking the turnover of which does not exceed \$11,000,000 for the turnover period.

(2) Subject to subsection (3), the turnover period of an undertaking is—

- (a) if the undertaking has a financial year, the financial year of the undertaking that ends in the preceding calendar year; or
- (b) if the undertaking does not have a financial year, the preceding calendar year.

(3) The turnover period of an undertaking is the period specified as such for the purpose of this subsection in the regulations made under section 162A(2) if—

- (a) for an undertaking that has a financial year—

- (i) the undertaking does not have a financial year that ends in the preceding calendar year; or
  - (ii) the financial year of the undertaking that ends in the preceding calendar year is less than 12 months; or
- (b) for an undertaking that does not have a financial year—
- (i) the undertaking is not engaged in economic activity in the preceding calendar year; or
  - (ii) the period in which the undertaking is engaged in economic activity in the preceding calendar year is less than 12 months.

(4) In this section—

“preceding calendar year” (對上公曆年) means the calendar year preceding the calendar year in which the conduct mentioned in subsection (1) is engaged in;

“turnover” (營業額) means the total gross revenues of an undertaking whether obtained in Hong Kong or outside Hong Kong.”.

Schedule 7, section 11(2) By deleting everything after “if completed” and substituting “be, excluded from the application of the merger rule by or as a result of section 8 (Exclusions) of this Schedule.”.