

立法會

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Paper for the House Committee meeting on 27 February 2015

Proposal for the appointment of a subcommittee under the House Committee to study the proposed subsidiary legislation on the procedures to be adopted by the Competition Tribunal

Purpose

This paper invites Members to consider a proposal from the Panel on Administration of Justice and Legal Services ("the AJLS Panel") for the appointment under the House Committee ("the HC") of a subcommittee to study the proposed subsidiary legislation on the procedures to be adopted by the Competition Tribunal ("the Tribunal") ("the Draft Rules").

Background

2. The Competition Ordinance (Cap. 619) ("the CO"), which was enacted in June 2012 and amended in November 2014, provides a legal framework for tackling anti-competitive conduct across different sectors. The CO prohibits anti-competitive agreements and abuse of market power the object or effect of which is to prevent, restrict or distort competition in Hong Kong. The CO also has a merger control regime which applies only to the telecommunications sector.

3. Since the enactment of the CO, the Administration and the Judiciary have been working on its phased implementation. One of the key tasks for the Judiciary is to set up the Tribunal, which is a superior court of record established under the CO having primary jurisdiction to hear and adjudicate on enforcement cases brought by the Competition Commission ("the Commission"), follow-on private actions, alleged

contravention of a conduct rule as a defence raised in proceedings before the Court of First Instance ("the CFI"), as well as reviews of certain determinations of the Commission/Communications Authority. Provisions relating to the Tribunal commenced on 1 August 2013. The President and Deputy President of the Tribunal were also appointed.

The Draft Rules

4. At the meeting of the AJLS Panel held on 16 February 2015, Members' views were sought on the following Draft Rules to be adopted by the Tribunal:

- (a) the Competition Tribunal Rules which set out the procedural rules for the Tribunal to cater for different types of proceedings that the Tribunal may need to deal with;
- (b) proposed amendments to the Rules of the High Court (Cap. 4 sub. leg. A) which provide for (i) the procedures for proceedings transferred between the Tribunal and the CFI; and (ii) the procedures for applications to the Court of Appeal for leave to appeal from the interlocutory decisions of the Tribunal;
- (c) the Competition Tribunal Fees Rules which set out the fees to be paid by users of the Tribunal for various purposes; and
- (d) the Competition Tribunal Suitors' Funds Rules which govern the administration of suitors' funds for the Tribunal in a way similar to that of the High Court, including how suitors' funds are lodged in and paid out of the Tribunal, investment of the funds, provision of interest for individual suitors' accounts and preparation of annual audited financial statements for the funds.

Proposal

5. Given the volume of the Draft Rules, the AJLS Panel agreed to the Judiciary Administration's request for the appointment of a subcommittee under the HC to study the Draft Rules in order to allow sufficient time for Members to scrutinize them before they are gazetted and laid on the table of the Legislative Council under the negative vetting procedures.

6. To facilitate Members' consideration of the Draft Rules, the Judiciary Administration and the Administration were requested to provide the following additional information for the consideration of the proposed sub-committee:

- (a) relationship between the contravention of the First Conduct Rule under section 6 of the CO and the Second Conduct Rule under section 21 of the CO;
- (b) comparison of the key procedures adopted by the Small Claims Tribunal and the Lands Tribunal and to be adopted by the Competition Tribunal;
- (c) comparison of the key differences in the procedures to be adopted by the Competition Tribunal and those adopted by the CFI;
- (d) rules and practice applicable to the competition-related courts in other common law jurisdictions; and
- (e) procedures for members of the public to seek remedies due to contravention of the requirements in the CO.

Advice sought

7. Members are invited to consider the AJLS Panel's proposal for the appointment of a subcommittee under the HC to study the Draft Rules. Members may wish to note that the HC had in the past supported the appointment of a subcommittee to study draft subsidiary legislation under rule 20(j)(i) of the House Rules ("HR"). These subcommittees included the Subcommittee to study the Draft Subsidiary Legislation to be made under the Securities and Futures Ordinance in 2003, the Subcommittee to Study the Draft Subsidiary Legislation Relating to the Rail Merger and the Subcommittee on Draft Subsidiary Legislation relating to the Civil Justice Reform. According to rule 26(d) of the HR, there is no restriction on the maximum number of subcommittees appointed by the HC for purposes set out in rule 20(j)(i) of the HR that may be in operation at any one time.