

**立法會**  
**Legislative Council**

LC Paper No. CB(4)1030/16-17  
(These minutes have been seen  
by the Administration)

Ref : CB4/PL/EDEV

**Panel on Economic Development**

**Minutes of meeting**  
**held on Monday, 27 March 2017, at 10:45 am**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon Jeffrey LAM Kin-fung, GBS, JP (Chairman)  
Hon Alvin YEUNG (Deputy Chairman)  
Hon WONG Ting-kwong, SBS, JP  
Hon Starry LEE Wai-king, SBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon LEUNG Kwok-hung  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, JP  
Hon WU Chi-wai, MH  
Hon YIU Si-wing, BBS  
Hon CHAN Chi-chuen  
Hon Kenneth LEUNG  
Dr Hon KWOK Ka-ki  
Hon Dennis KWOK Wing-hang  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Elizabeth QUAT, JP  
Hon Martin LIAO Cheung-kong, SBS, JP  
Dr Hon CHIANG Lai-wan, JP  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon CHU Hoi-dick  
Hon Jimmy NG Wing-ka, JP  
Dr Hon Junius HO Kwan-yiu, JP  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai  
Hon CHAN Chun-ying  
Hon LUK Chung-hung

Hon Kenneth LAU Ip-keung, MH, JP  
Hon Jeremy TAM Man-ho  
Dr Hon YIU Chung-yim

**Member attending** : Hon LAM Cheuk-ting

**Members absent** : Hon James TO Kun-sun  
Hon WONG Kwok-kin, SBS, JP  
Hon Claudia MO  
Hon Charles Peter MOK, JP  
Hon CHUNG Kwok-pan  
Hon Nathan LAW Kwun-chung

**Public Officers attending** : Agenda item IV

Transport and Housing Bureau

Professor Anthony CHEUNG, GBS, JP  
Secretary for Transport and Housing

Mr Wallace LAU  
Deputy Secretary for Transport and Housing  
(Transport) 4

Ms Joyce CHAN  
Principal Assistant Secretary for Transport and  
Housing (Transport) 9

Civil Aviation Department

Captain Victor LIU, JP  
Deputy Director-General of Civil Aviation (1)

Mr Alan SHUM  
Assistant Director-General of Civil Aviation (Air  
Services and Safety Management)

Agenda item V

Commerce and Economic Development Bureau

Ms Leona LAW  
Principal Assistant Secretary for Commerce and  
Economic Development (Commerce and Industry) 2

**Related organization** : Agenda item V  
Competition Commission  
Hon Anna WU, GBS, JP  
Chairperson  
Ms Rose WEBB  
Chief Executive Officer  
Mr Rasul BUTT  
Senior Executive Director

**Clerk in attendance** : Ms Shirley CHAN  
Chief Council Secretary (4)5

**Staff in attendance** : Mr Bonny LOO  
Assistant Legal Adviser 4 (Agenda item IV only)

Ms Shirley TAM  
Senior Council Secretary (4)5

Ms Lauren LI  
Council Secretary (4)5

Ms Zoe TONG  
Legislative Assistant (4)5

Miss Mandy LUI  
Clerical Assistant (4)5

---

Action

**I. Confirmation of minutes of meeting**

(LC Paper No. CB(4)709/16-17 — Minutes of policy briefing cum meeting held on 23 January 2017)

The minutes of the policy briefing cum meeting held on 23 January 2017 were confirmed.

## **II. Information papers issued since the last meeting**

(LC Paper No. CB(4)646/16-17(01) — Administration's paper on tables and graphs showing the import and retail prices of major oil products from February 2015 to January 2017

LC Paper No. CB(4)694/16-17(01) — Letter from Hon CHAN Kin-por dated 14 March 2017 on withdrawal of membership (Chinese version only)

LC Paper No. CB(4)705/16-17(01) — Letter from Hon Abraham SHEK Lai-him dated 15 March 2017 on withdrawal of membership (English version only)

LC Paper No. CB(4)720/16-17(01) — Letter from Hon MA Fung-kwok dated 17 March 2017 on withdrawal of membership (Chinese version only)

LC Paper No. CB(4)728/16-17(01) — Letter from Hon Fernando CHEUNG Chiu-hung dated 20 March 2017 on withdrawal of membership (Chinese version only)

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

## **III. Items for discussion at the next meeting**

(LC Paper No. CB(4)711/16-17(01) — List of outstanding items for discussion

LC Paper No. CB(4)711/16-17(02) — List of follow-up actions)

3. Members agreed to discuss the following items at the next regular meeting scheduled for Monday, 24 April 2017 at 10:45 am –

- (a) Proposed rationalization of a directorate post for supporting the development of the logistics industry; and
- (b) Amendments to Shipping and Port Control Regulations (Cap. 313A) and the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F).

**IV. Amendments to the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (Cap. 448B)**

(LC Paper No. CB(4)711/16-17(03) — Administration's paper on establishing an Independent Air Accident Investigation Authority and Amendments to the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (Cap. 448B))

Presentation by the Administration

4. At the invitation of the Chairman, Secretary for Transport and Housing ("STH") briefed the Panel on the recommendation of establishing an independent air accident investigation authority ("the independent investigation authority") under the Transport and Housing Bureau ("THB"), in order to comply with the new requirement of the International Civil Aviation Organisation ("ICAO"). This independent investigation authority would be dedicated to the investigation of civil aviation accidents and serious incidents as defined in Annex 13 to the Convention on International Civil Aviation – Aircraft Accident and Incident Investigation ("Annex 13"). To lead the work of the new authority, the Administration proposed to create a supernumerary Chief Inspector of Accidents ("CIA") non-civil service post (equivalent to the rank of D2) for three years. In order to confer on the necessary authority and CIA statutory powers to execute their duties, the Administration would make corresponding amendments to the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (Cap. 448B) ("the Regulations").

5. With the aid of powerpoint presentation material, Assistant Director-General of Civil Aviation (Air Services and Safety Management)

("ADGCA") of the Civil Aviation Department ("CAD") elaborated further the above proposals. Details were set out in the Administration's paper (LC Paper No. CB(4)711/16-17(03)).

*(Post-meeting note: The power-point presentation material provided by the Administration was issued to members vide LC Paper No. CB(4)758/16-17(01) on 27 March 2017.)*

### Discussion

#### *Manpower establishment and scope of work of the independent investigation authority*

6. Mr Jeremy TAM expressed support for the establishment of the independent investigation authority for civil aviation accidents and serious incidents which had been proposed by some industry stakeholders for a long time. Noting that under the existing arrangement, some CAD staff were deployed to conduct civil aviation investigations on a part-time basis, he enquired about the number of CAD staff participating in relevant work as well as the number of investigations conducted by CAD in the past.

7. Noting that the Senior Operations Officer ("SOO") and Operations Officer ("OO") currently serving in the Accident Investigation Office of CAD would be deployed to fill the investigator posts in the independent investigation authority, the Deputy Chairman sought further clarification on such arrangement including the future manpower deployment of CAD and the manpower establishment of the independent investigation authority.

8. STH said that under the existing arrangement, the investigation of civil aviation accident was led by a CIA, currently the Director-General of Civil Aviation ("DGCA"). CIA would assign a dedicated team comprising a number of qualified Inspectors of Accidents deployed from various divisions of CAD, among which one would be the Investigator-in-Charge. These team members participated in investigations on a part-time basis and were required to perform their original duties during the investigations. In order to coordinate the administrative and logistics support work of investigations, CAD had established a specialised Accident Investigation Office comprising one permanent Senior Operations Officer post and one permanent Operations Officer post. According to the Government's proposal, future investigations of civil aviation accidents and serious incidents would be spearheaded by a dedicated CIA of the independent investigation authority in lieu of DGCA. The new CIA would lead a team of six full-time officers who would be involved in investigations with two of them (i.e. one SOO and one OO) deployed from the current Accident Investigation Office of CAD.

9. On the number of civil aviation accident investigations, Deputy Secretary for Transport and Housing (Transport) 4 ("DSTH4") advised that the investigations conducted by CAD in recent years were: (a) in 2012, one overseas serious incident; (b) in 2013, two local accidents and two overseas accidents; (c) in 2014, one overseas accident; (d) in 2015, one local serious incident and two overseas serious incidents; (e) in 2016, three local accidents, one local serious incident and one overseas serious incident; and (f) in 2017 (up to end February), one local accident. He agreed to provide the information in writing after the meeting.

*(Post-meeting note: The Chinese version of the Administration's response was issued to members vide LC Paper No. CB(4)927/16-17(01) on 26 April 2017.)*

10. Dr CHIANG Lai-wan expressed support for the establishment of an independent investigation body to conduct civil aviation investigations. Nevertheless, she cast doubts on the justification to create six full-time civil service investigator posts. Given that the causes of each civil aviation accident were very different which might warrant for engaging outside specialist advisors to deal with the matters, she suggested that the independent investigation authority might appoint professionals with relevant expertise to conduct the civil aviation investigations on an ad hoc basis.

11. STH said that ICAO had made amendments to Annex 13, requiring States to establish an independent air accident investigation authority. The new standard had taken effect since November 2016 and ICAO recommended the Contracting States to implement such new standard within two years. At present, many countries had established their own air accident investigation authorities which were independent from the civil aviation authorities. Generally speaking, most of the investigation authorities fell under the purview of ministry/department in charge of transport management, or formed part of the government, such as the cases of France and the United Kingdom. Taking into account these examples, the Administration proposed the establishment of the independent investigation authority under THB.

12. In respect of the proposed manpower establishment of the independent investigation authority, STH explained that the Administration considered that the six full-time investigators could assist CIA in the investigation work and expedite the investigation process. The industry would then be able to learn about the findings early, so as to draw safety lessons and adopt and implement safety recommendations. Such establishment would be reviewed after the independent investigation authority had been operated for a period of time.

13. Ir Dr LO Wai-kwok noted the Government's consideration that Hong Kong, being part of China which was one of the Contracting States of ICAO, had an obligation to comply with ICAO's new standard on civil aviation accident investigations. However, he urged the Administration to ascertain how far Hong Kong, not being a Contracting State itself, should comply with the requirement having regard to its actual need and obligation in ICAO. He considered that the experience of overseas countries might not directly apply to Hong Kong as Hong Kong was not a country. He also queried whether the existing arrangement for conducting investigation on civil aviation accidents had given rise to any problems to the extent that it was necessary to establish a new investigation body. Regarding the independent investigation authority proposed by the Administration, Ir Dr LO queried the need for creating seven full-time posts under CIA, given that the number of relevant civil aviation accidents/serious incidents was very few in the past.

14. STH said that under the principle of "one country, two systems", Hong Kong had always closely followed the international conventions in respect of maritime and aviation matters whether or not it was a contractual party to them, and its role was widely recognized by relevant international organizations. He stressed that the amended Annex 13 had spelt out the need for the investigation authority to be independent from the state aviation authorities and other entities that could interfere with the conduct or objectivity of an investigation. As such, the Government put forward the proposal which had nothing to do with the CAD's previous performance on civil aviation accident investigations and those investigations were in fact always up to the international standard.

15. STH explained further that the strengthened full-time manpower establishment of the independent investigation authority aimed to shorten the investigation time which was considered unsatisfactory under the existing arrangement. He agreed to provide further information about the time required for conducting previous accident investigations. In response to the Chairman, STH remarked that the industry, particularly airlines and pilot associations, and the International Air Transport Association, had been requesting the Government to establish such an independent body over the years. The Administration would launch formal consultation with the industry and relevant stakeholders as soon as possible.

*(Post-meeting note: The Chinese version of the Administration's response was issued to members vide LC Paper No. CB(4)927/16-17(01) on 26 April 2017.)*

16. Dr YIU Chung-yim pointed out that civil aviation accidents were



uncommon and sometimes required substantial manpower and resources to conduct investigations. As such, it was difficult to estimate the daily workload and hence the manpower establishment of the independent investigation authority. To meet the ICAO's standard, he suggested that the Administration could adopt a flexible approach in setting up the new authority. Taking overseas examples, such authority might be led by a "commissioner" with minimum manpower support. Apart from conducting investigations, the independent investigation authority should maintain close liaison with the aviation industry and the educational sector so as to identify a pool of relevant talents. This could facilitate the appointment of appropriate talents for the investigation work on an ad hoc basis when such need arose.

17. DSTH4 replied that the Government's proposal was quite similar to the one suggested by Dr YIU Chung-yim in terms of work relating to the liaison with stakeholders in the aviation industry. He said that the independent investigation authority, to be headed by a CIA, would comprise three Senior Operations Officers, each supported by an Operations Officer. They would be respectively responsible for (a) safety management; (b) staff training, maintenance of investigation equipment; and (c) participation in international organizations or activities in relation to air accident investigation and aviation safety and keep the industry informed about the latest international requirements and relevant issues. Among the three Senior Operations Officers, the most senior one would be appointed as the Deputy CIA. He added that the promotion of safety management and accident prevention initiatives would be conducted throughout the year, which included analyzing data to identify safety hazards, proposing safety recommendations and collaborating with the aviation industry to disseminate safety information across the sector. In response to Mr Jeremy TAM's request, DSTH4 undertook to provide the job descriptions of and requirements for the six SOO / OO posts under CIA.

*(Post-meeting note: The Chinese version of the Administration's response was issued to members vide LC Paper No. CB(4)927/16-17(01) on 26 April 2017.)*

18. Mr CHAN Chun-ying supported the broad direction that the civil aviation accident investigations should be conducted by an authority independent from CAD. He considered it essential for such authority to focus its work on safety management and accident prevention. In this regard, he urged the Administration to specify these responsibilities explicitly in the job description of the proposed CIA post. He also enquired about the justification for establishing such post for only three years instead of a permanent one for the purpose of meeting the ICAO's requirement.

19. STH said that the Government attached high importance to safety management and accident prevention which would be listed as part of the key responsibilities of the independent investigation authority. The Administration would consider how to better reflect these responsibilities in the job description of the CIA post. STH also stressed that the independent investigation authority would be a permanent body so as to comply with ICAO's requirements. In order to allow flexibility for the Government to review whether the manpower establishment of the authority would suit the actual operational needs, the CIA post would initially be established for three years on non-civil service terms.

*Recruitment difficulties*

20. Mr YIU Si-wing expressed support for the establishment of the new authority which was separated from CAD. As CAD was currently a specialized department with professional expertise to deal with civil aviation activities in Hong Kong, he asked how the Administration could ensure that the independent investigation authority could recruit trained personnel with highly specialized civil aviation knowledge and experiences so as to perform its functions.

21. The Chairman pointed out that the establishment of the independent investigation authority would enable Hong Kong to comply with the international standard as well as ensure the impartiality of relevant investigations. He raised concern if there would be any difficulties in recruiting suitable talents to take up the relevant posts.

22. STH responded that the new CIA had to have practical experience in civil aviation accident and serious incident investigations in order to oversee the investigation work effectively. The new CIA should also possess professional aviation knowledge, including the ICAO's relevant requirements. The local pool of talents possessing the requisite experience and competence was rather limited. In this connection, the Government proposed the adoption of a more flexible approach that the CIA post, equivalent to the rank of D2, be appointed on non-civil service terms. The Government would review the overall arrangement in due course.

23. Mr Jeremy TAM expressed concern if only CAD staff would be qualified for applying for the investigator posts in the new independent investigation authority given the highly specialized job nature. DSTH4 admitted that the local personnel possessing the relevant experience and competence were mainly from CAD and perhaps some major airlines. Currently, the Administration aimed to employ local talents to fill these posts as far as possible.

24. In response to Mr Jeremy TAM's further question about soliciting outside assistance for accident investigation, Deputy Director-General of Civil Aviation (1) ("DDGCA(1)") said that this kind of arrangement was rather common internationally. He quoted as an example that CAD had previously engaged an overseas expert to assist in the investigation of a case involving fuel contamination, and the independent investigation authority might make similar arrangement when necessary.

*Powers of the independent investigation authority*

25. Mr Kenneth LAU supported the establishment of the independent investigation authority to segregate the investigation work from CAD to ensure the impartiality of the investigations. However, he was concerned about the definitions of civil aviation accidents and serious incidents subject to the investigation by the new authority. He also questioned whether the new authority would investigate the previous incidents related to the new air traffic management system ("ATMS") and previous civil aviation accidents.

26. The Chairman enquired about the scope of investigation of the independent investigation authority and whether air accidents in relation to business aircraft, helicopters, as well as unmanned aircraft systems ("UASs") would fall within the scope of the new authority.

27. DDGCA(1) explained that according to Annex 13, an "accident" referred to an occurrence associated with the operation of an aircraft where a person was fatally or seriously injured, the aircraft sustained damage or structural failure or the aircraft was missing or was completely inaccessible. Annex 13 further defined a "serious incident" as an occurrence, other than an accident, associated with the operation of an aircraft which affected or could affect the safety of operation, and set out some examples. STH supplemented that the teething issues arising from the operation of the new ATMS did not have any impact on aviation safety, and they were being followed up by CAD currently. He stressed that there was no civil aviation accident/serious incident found to be related to the operation of the new ATMS. He agreed to provide further information about the definitions of "civil aviation accident" and "serious incident" adopted by ICAO after the meeting.

*(Post-meeting note: The Chinese version of the Administration's response was issued to members vide LC Paper No. CB(4)927/16-17(01) on 26 April 2017.)*

28. On UASs, STH said that any of such systems weighing over

7 kilogrammes were subject to regulation under the current law. The Administration was reviewing the existing regulatory framework for the operation of UASs and envisaged that the findings of the consultancy would be available by the end of 2017. It was expected that the investigations of relevant UAS accidents or serious incidents would be within the scope of the independent investigation authority.

29. Mr Holden CHOW enquired whether the independent investigation authority would have the power to summon DGCA to examine and take statements during an investigation of a civil aviation accident.

30. STH explained that the current Regulations had stipulated respective duties and powers in regard to accident investigation for DGCA and CIA (currently performed by DGCA). The Government would amend the Regulations to transfer the existing powers related to accident investigation conferred on DGCA to CIA, so that the new CIA would have all necessary powers in relation to accident investigation, including summoning persons to examine and take statements. That said, DGCA might be summoned if CAD was involved in the causes of a particular civil aviation accident in future. In response to Mr Holden CHOW's further question, STH said that the independent investigation authority might report to the Legislative Council ("LegCo") on its work upon the latter's request.

31. As civil aviation accidents and serious incidents might involve legal liabilities and compensations covered by insurance, Mr YIU Si-wing enquired whether the independent investigation authority would provide advice on the follow-up legal actions or insurance claims arising from the investigation of a civil aviation accident/serious incident. He also asked whether the procedures for taking such follow-up actions would be stipulated in the amended Regulations.

32. STH said that according to the Standards and Recommended Practices of ICAO and international practices, the objective of civil aviation accident investigations was to determine the circumstances and causes of the accidents or serious incidents concerned with a view to the preservation of life and the avoidance of accidents in the future, but not to apportion blame or liability. Similar to the current practice, the new CIA would be required to submit report to the Chief Executive upon completion of an investigation, setting out the identified causes of the accidents or serious incidents, as well as some recommendations. Depending on the situation of each investigation, follow-up legal actions or insurance claims might be taken by parties concerned afterwards, which would be outside the purview of the independent investigation authority.

Conclusion

33. The Chairman concluded that the Panel in general supported the establishment of the independent investigation authority and the relevant legislative amendments. However, some members raised concern about the proposed manpower establishment of the new authority. He called on the Administration to review the proposal and provide the outcome of its further consideration to the Panel after the meeting.

*(Post-meeting note: The Chinese version of the Administration's response was issued to members vide LC Paper No. CB(4)927/16-17(01) on 26 April 2017.)*

**V. Report on the work of the Competition Commission**

(LC Paper No. CB(4)711/16-17(04) — Competition Commission's report on its work

LC Paper No. CB(4)711/16-17(05) — Paper on the work of the Competition Commission prepared by the Legislative Council Secretariat (background brief))

Presentation by the Competition Commission

34. At the invitation of the Chairman, Ms Anna WU, Chairperson of the Competition Commission ("the Commission") briefed members on the overview of the activities of the Commission since the full commencement of the Competition Ordinance (Cap. 619) on 14 December 2015. Ms Rose WEBB, Chief Executive Officer of the Commission and Mr Rasul BUTT, Senior Executive Director of the Commission introduced the Commissions' work on enforcement, market study, policy advice, as well as public engagement and advocacy. Details were set out in the Commission's paper (LC Paper No. CB(4)711/16-17(04)).

Discussion

*Commission's work on law enforcement and market study*

35. Dr Junius HO noted that the Commission had so far received and

processed over 2 000 complaints and enquiries. Among them, around 130 complaints were assessed further, of which 13% had proceeded to in-depth investigation stage. He enquired about the details of the cases under in-depth investigation. In response, Mr Rasul BUTT of the Commission said that these cases were largely related to cartel conduct, especially bid-rigging, under the first conduct rule. Ms Rose WEBB of the Commission supplemented that the Commission would keep its investigation information confidential to ensure the integrity of the investigation.

36. Mrs Regina IP appreciated the efforts of the Commission in combating anti-competition conduct in Hong Kong. To this end, she raised concern about the suspected market monopoly by the Link Real Estate Investment Trust ("the Link") in some public housing estates and residential buildings. She suggested the Commission conduct a market study on this matter, and keep monitoring the situation to prevent market monopoly in new public housing estates and residential buildings. The Chairman supported the proposal. He pointed out that market monopoly might arise from the activities of both large and small consortia.

37. Dr KWOK Ka-ki was concerned about the monopolistic situation in the public markets managed by the Link or other consortia. He asked if the Commission would take actions to address the problem.

38. Ms Anna WU of the Commission remarked that the Commission attached great importance to market competition in public housing estates and residential buildings, and would look into the matter as appropriate.

39. Mr Frankie YICK said that the logistics sector had filed a complaint to the Commission in December 2015 against the suspected price-fixing activities of oil companies in the auto-fuel market. Although he had raised relevant concerns to the Environment Bureau, the bureau had only introduced two more players into the market which was ineffective to drive competition. Instead, he suggested that the market could apply a pricing adjustment mechanism similar to the ceiling prices adjustment mechanism adopted for auto-liquefied petroleum gas ("LPG") at some dedicated taxi LPG filling stations.

40. Mr Holden CHOW expressed concern about the suspected cartel conduct of the auto-fuel market. Noting that the Commission was finalizing a relevant study, he asked about the timeline for releasing the report and its follow-up actions on this matter.

41. Dr KWOK Ka-ki considered that the oil companies had been engaging in price-fixing activities for some time given that the retail auto-fuel prices

among the petrol filling stations ("PFSs") of different oil companies were essentially the same. In this regard, he asked about the key findings of the Commission's study of the auto-fuel market and the way forward. He also urged the Commission to take appropriate actions to tackle the problem so as to boost the public confidence in the Commission's enforcement work.

42. Mr Rasul BUTT of the Commission explained that the Commission had taken a longer time to study the auto-fuel market as the scope had been expanded to cover, apart from auto-fuel price, the market structure, the current state of competition and recommendations to improve the current situation. During the study, the Commission had also come across the pricing adjustment mechanism applied on auto-LPG. He expected that the study outcome would be released by late April/early May 2017.

43. Mr LAM Cheuk-ting appreciated the Commission's study into certain aspects of the residential building renovation and maintenance market in Hong Kong. The study report, which was released in 2016, found that bid-manipulation practices had occurred in that market in the recent past. He enquired about the number of relevant complaints received by the Commission so far. He also called on the Commission to step up its engagement and advocacy work, such as collaborating with the Home Affairs Bureau to communicate with owners' corporations of buildings and alert them to report to the Commission any potential bid-riggings in relation to building renovation and maintenance.

44. Ms Rose WEBB of the Commission responded that the Commission had received a lot of complaints about bid-rigging particularly in the building maintenance sector and some of the cases had been under investigation. However, she could not disclose further details of such cases which should be kept confidential.

45. Dr YIU Chung-yim raised concerns about the advisory bulletin published by the Commission regarding the competition concerns arising from the codes of conduct of two professional associations. He said that although the Commission had met with some professionals to explain the matter, some of them were still concerned about the dilemma that they were required to comply with both the law and the respective codes of conduct under conflicting circumstances. To avoid posing such a dilemma, he urged the Commission to enhance its liaison with professional bodies and professionals, and develop practice notes covering relevant court cases in overseas jurisdictions, so as to assist professional bodies in amending their codes of conduct.

46. Mr Rasul BUTT of the Commission explained that one advisory bulletin was issued as a result of the comprehensive review of the published practices of some 300 professional organizations conducted by the Commission. Under the review, the Commission had identified over 20 organizations whose published practices were considered to be at high risk of contravening the Ordinance. Upon the Commission's advices, most of these organizations had taken steps to remove or amend the problematic provisions in their codes of conduct. He stressed that the Commission had maintained close liaison with various professional bodies and trade associations upon the full commencement of the Ordinance. To address Dr YIU's concern, the Commission could share information on relevant court cases in overseas jurisdictions.

*Matters relating to different sectors*

47. In respect of the block exemption order ("BEO") application made by the Hong Kong Liner Shipping Association ("HKLSA"), the Chairman relayed the industry's concerns about the Commission's proposal to issue a BEO for vessel sharing agreements ("VSAs") subject to a market share threshold of 40%, and exclude voluntary discussion agreements ("VDAs") from the exemption. They cast doubt on the proposal given that both VSAs and VDAs had been operating smoothly and effectively in the industry for some time. In addition, the 40% market share threshold was overly stringent as compared with that of Singapore and such threshold would affect the competitiveness of the local shipping industry.

48. Mr Frankie YICK was concerned that if VDAs were not exempted in Hong Kong under the Ordinance similar to the practice in other major economies, the competitiveness of local shipping industry would be weakened. Given that HKLSA had submitted a supplementary representation to revise the content of VDAs, he urged the Commission to consider the proposal of HKLSA and make its final decision as early as possible before the shipping lines scheduling the ship deployment for the coming two years in April 2017. Sharing a similar concern, Mrs Regina IP enquired about the timing for announcing the application's result.

49. Ms Anna WU of the Commission replied that the Commission needed more time to review the supplementary representation submitted by HKLSA before making a final decision on this application. Hence, the application outcome would be announced by mid-2017.

50. Ms Rose WEBB of the Commission supplemented that on the market share threshold, the Commission would review the matter further taking into



account the comments received, the practices of other jurisdictions, as well as the differences of the competition framework adopted in Hong Kong from that of other jurisdictions before making the final decision. In response to Mrs Regina IP's further enquiry, Ms WEBB expected that the Commission would probably receive more BEO applications after the announcement of its decision on the HKLSA's application.

51. Mr YIU Si-wing said that with the commencement of the Ordinance, the travel trade was concerned about whether the current trade practices were in compliance with the law. In this regard, the trade had consulted the Commission in respect of the measures implemented by the Travel Industry Council of Hong Kong ("TICHK") aiming to protect tourists/consumers from being misled by some advertisements or promotional materials. He questioned if the Commission had received any complaints against measures implemented by TICHK and the progress of its investigation.

52. Mr Rasul BUTT of the Commission said that he could not disclose the nature of the complaints the Commission had received. However, the Commission had maintained close liaison with TICHK on competition matters. In fact, TICHK had revised some of its guidelines so as to ensure their compliance with the Ordinance. The Commission would continue to provide advices on relevant matters if necessary.

53. Mr Jeremy TAM said that some public transport services were highly protected from competition or even monopolized by some operators. To provide more choices for consumers, there were suggestions for developing information sharing platforms with the use of advanced software technology, such as the "carpooling" or "ridesharing" programmes. In this regard, he enquired about the Commission's views on this business approach and if the Commission had made any relevant advices to the Government.

54. Mr Rasul BUTT of the Commission said that in considering the provision of services under the innovative business models of sharing economy, although the Commission had not looked into each model in detail, it was expected that the Commission would be supportive in general as long as such business models would enhance the market competition and bring benefits to consumers.

*Matters relating to Government's policies*

55. Dr KWOK Ka-ki raised concern about the level of electricity tariffs charged by the two power companies. Given that the current Scheme of Control Agreements ("SCAs") between the Government and the two power

companies would expire shortly, he enquired whether the Commission had advised the Government on suitable measures to introduce more competition to the electricity market so as to bring benefits to electricity users under the new SCAs framework.

56. Ms Anna WU of the Commission said that while the Commission was responsible for enforcing the Ordinance, the Government policies did not come under the regulatory ambit of the Ordinance. However, the Commission would advise the Government on competition matters in Hong Kong and outside Hong Kong. In this connection, the Commission had provided its views and recommendations on local power supply to the Government during the public consultation on the future development of the electricity market conducted in 2015.

57. Mr LUK Chung-hung expressed concern about the lack of competition in respect of the current piped LPG supply arrangement in the 15 public housing estates managed by the Hong Kong Housing Authority ("HKHA"). He suggested that HKHA should conduct open tender for the award of LPG supply contracts for public housing estates in future, and urged the Commission to address this matter as far as practicable.

58. Mr Rasul BUTT of the Commission said that the Commission had issued an advice to HKHA in September 2016 recommending it to consider introducing a competitive process in determining the award of subsequent LPG supply contracts for the public housing estates concerned. The Commission was paying close attention to the relevant development as some of the LPG supply contracts would expire shortly.

59. Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry) 2 ("PAS(CI)2") supplemented that the Housing Department had been liaising with LPG suppliers and other departments concerned, and would take into account the Commission's advice in reviewing the prevailing arrangements for renewing contracts for the supply of centralised LPG to existing public housing estates. It planned to submit the review, including the proposed arrangements for awarding future LPG contracts, to the relevant committee of HKHA for consideration after completion of the review.

60. Mr YIU Si-wing asked if the collusive agreement between airline operators on the level of passenger fuel surcharges was a contravention of a conduct rule under the Ordinance.

61. Ms Rose WEBB of the Commission said that the Commission was in

touch with THB on the surcharging arrangements for aircraft. Noting that THB had recently introduced a new model on the cargo fuel surcharge arrangements with a view to enhancing its transparency, the Commission would discuss with THB further to ensure that the new model would not lead to competition concerns.

62. Mr SHIU Ka-fai noted that the Food and Health Bureau proposed to implement restrictions over the promotional practices for formula milk for infants and young children aged 36 months or below, under the "Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children". He asked if there would be any competition concerns arising from such restrictions.

63. Ms Rose WEBB of the Commission said that the Commission had touched base with the industry on this matter, and would engage with the Government further with a view to facilitating the parties to work out a way without competition concerns while the objectives of the policy could be maintained.

64. Ms Anna WU of the Commission supplemented that in view of the public concerns over the competition matters of the Government policies, members might consider requesting the Government to set out the analysis on competition as regards its policies and measures in the papers to be submitted to LegCo in future.

*Resources required by the Commission*

65. The Deputy Chairman enquired about the approximate time required for the Commission to deal with a complaint. Given that the financial provision allocated to the Commission had been reduced in the financial year 2017-2018, he expressed concern if the Commission had enough resources to discharge its duties under the Ordinance, and enquired which areas of work the Commission would like to strengthen if additional resources were provided.

66. Ms Rose WEBB of the Commission said that the progress of investigations largely depended on the subject matters involved. For example, for the recent case which the Commission commenced proceedings before the Competition Tribunal ("Tribunal"), it took about nine months for the Commission to conduct investigation before taking the case to the Tribunal in March 2017. Ms Anna WU of the Commission supplemented that it was not common to take a competition case to court in such a short time, attributable to the clear evidences found in relevant documents and the electronic devices. In general, cases of bid-rigging which usually involved several parties and

substantial work on evidence collection normally required a longer time before the cases could be taken to court.

67. On resources, Ms Anna WU of the Commission stressed that the Government's financial provision would need to be increased, given that the Commission was responsible for both law enforcement and prosecution under the Ordinance. In the interim, the Commission would make internal deployment of resources in carrying out its enforcement actions.

68. Mr Holden CHOW said that the cases of anti-competitive conduct were rather complex and thus required a lot of manpower resources for undertaking investigations. He urged the Government to review the adequacy of resources provided to the Commission and make suitable adjustments.

69. Mr LAM Cheuk-ting pointed out that the Commission's work on market studies and prosecutions relating to competition matters needed substantial resources. He called on the Government to increase the relevant financial provision to support the Commission in taking forward the prosecutions successfully so as to achieve a deterrent effect on bid-rigging activities in Hong Kong.

70. In response to Mr Jeremy TAM's enquiry about the additional resources required by the Commission, Ms Anna WU of the Competition said that in Australia, the competition authority would have a separate funding of about AUD\$10 million for litigation, which would be adjusted in accordance with the actual need. As for Hong Kong, a dedicated fund of \$100 million had been suggested by some quarters. Currently the Commission was in discussion with the Government on this matter and had made a proposal to the Government based on its past experience. She stressed that whatever the approach it would be, it should address the long-term need of the Commission on a recurrent basis.

71. Mr Dennis KWOK expressed grave concern about the financial provision allocated to the Commission for handling litigation, especially for the payment of legal costs incurred as a result of adverse rulings by court. To this end, he recapitulated his repeated calls for setting up a litigation war chest for the Commission and asked for the Government's view on this proposal. Dr KWOK Ka-ki raised a similar suggestion which could assist the Commission in enforcing the Ordinance effectively.

72. Ms Anna WU of the Commission said that there was currently no separate provision for the Commission to take litigation actions. It could only use its own reserve to meet the legal costs for bringing proceedings in the

Tribunal and such reserves would be exhausted shortly. In fact, the litigation costs could be substantially high, especially if there were appeals following the first ruling of the Tribunal or in the event of the Commission losing the case.

73. PAS(CI)2 said that in 2017-2018, the Government would allocate about \$78 million to the Commission to support its operation. The Government noted the concern of the Commission in respect of resources for litigation, and would seek funding for the Commission. It would continue to liaise closely with the Commission in this regard.

### *The Ordinance*

74. Mr Holden CHOW noted that the Ordinance provided for follow-on right of action to be brought by a person who had suffered loss or damage as a result of the contravention of a conduct rule by another party, and such action should follow on from a determination of a contravention by court. He suggested that the Government should consider introducing the right for stand-alone private action so as to give the public an additional channel to seek justice.

75. Ms Anna WU of the Commission expressed support for Mr Holden CHOW's proposal. She envisaged that if there was an alternative channel for the public to seek justice, the number of cases brought to the Commission might be less. In fact, under the current mechanism, it was necessary for the Commission to apply for a Tribunal order against the person who had admitted to have contravened a conduct rule, so as to protect the follow-on right of action of the victims in an anti-competitive case. This arrangement had increased the workload of the Commission.

76. Dr Junius HO said that in view of the possible liability of the Commission in case it lost a lawsuit, the Government could consider amending the Ordinance to protect the Commission from being liable for the legal costs incurred by the opposite party. He suggested the Government make reference to similar provisions available in section 16C of the Legal Aid Ordinance (Cap. 91) in drafting relevant amendments.

77. PAS(CI)2 pointed out that the Government had undertaken to conduct a review on the Ordinance after it had been in operation for a number of years, taking into account the experience gained and problems encountered.

### Motions

78. Members noted that there were two motions under this agenda item.

The Chairman ruled that these motions were directly related to the agenda item.

*Motion moved by Mr Holden CHOW*

79. At members' request, the Chairman ordered that a division would be taken on the first motion. The division bell was rung for five minutes.

80. Mr Holden CHOW moved the first motion, as follows –

"本會促請政府盡快檢視及研究增加競委會在調查執法方面的人手及財政資源，以提高競委會的執法效率；同時，建議當局研究優化《競爭條例》引入直接私人訴訟機制給予公眾多一個渠道討回公道，以鞏固中小企業及消費者權益。"

(Translation)

"This Panel urges the Government to expeditiously review and consider increasing the manpower and financial resources for the conduct of investigation and enforcement by the Competition Commission, in order to enhance the enforcement efficiency of the Commission. The Panel also suggests that the Administration should consider enhancing the Competition Ordinance by introducing the mechanism of initiating private actions, which will give the public an additional channel to seek justice, as well as safeguard the interests of the small and medium enterprises and consumers."

81. Mr Frankie YICK said that members of the Liberal Party had reservation on the motion and would discuss further among themselves on this subject.

82. The Chairman put the motion to vote. Fifteen members voted for, two members voted against the motion, and three members abstained. The voting results were as follows:

*For:*

Mr WONG Ting-kwong

Ms Starry LEE

Mr Paul TSE

Mr LEUNG Kwok-hung

Mr Steven HO

Mr CHAN Chi-chuen

Mr Dennis KWOK

Mr Christopher CHEUNG

Dr Elizabeth QUAT  
Mr Alvin YEUNG  
Mr LUK Chung-hung  
Dr YIU Chung-yim  
(15 members)

Ir Dr LO Wai-kwok  
Mr Holden CHOW  
Mr Kenneth LAU

*Against:*

Mr Frankie YICK  
(2 members)

Mr SHIU Ka-fai

*Abstain:*

Mr YIU Si-wing  
Mr CHAN Chun-ying  
(3 members)

Mr Jimmy NG

83. The Chairman declared that the motion was carried.

*Motion moved by Dr YIU Chung-yim*

84. Dr YIU Chung-yim moved the second motion, as follows –

"本會促請競委會加強與專業團體及專業人士聯系，並制訂作業備考以協助行業及團體修訂有關作業傳統及專業守則，避免在互相矛盾的情況下令專業人士在守法和守專業守則出現兩難。"

(Translation)

"This Panel urges the Competition Commission to enhance liaison with professional bodies and professionals and develop practice notes, so as to assist trades and bodies in changing their respective traditions of operation and codes of conduct, thereby avoiding posing a dilemma for professionals who are under conflicting circumstances required to comply with the law and the respective codes of conduct."

85. The Chairman recalled that concerns and suggestions similar to those spelt out in the motion had been raised by some trade associations and

organizations upon the establishment of the Commission. The Commission had also agreed to review the matter after a year of operation, and liaise with relevant associations and organizations to work out the guidelines.

86. The Chairman put the motion to vote. As a majority of members present at the meeting voted for the motion, the Chairman declared that the motion was carried.

*(Post-meeting note: The Administration's response to the two motions was issued to members vide LC Paper No. CB(4)942/16-17(01) on 28 April 2017.)*

**VI. Any other business**

87. There being no other business, the meeting ended at 1:02 pm.

Council Business Division 4  
Legislative Council Secretariat  
16 May 2017