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Legislative Council

LC Paper No. CB(1)495/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/PL/EDEV/1

Panel on Economic Development

Minutes of meeting
held on Monday, 24 November 2008, at 10:45 am
in Conference Room A of the Legislative Council Building

Members present	:	Hon Jeffrey LAM Kin-fung, SBS, JP (Chairman) Hon Albert HO Chun-yan Dr Hon David LI Kwok-po, GBM, GBS, JP Hon Fred LI Wah-ming, JP Hon CHAN Kam-lam, SBS, JP Hon Emily LAU Wai-hing, JP Hon Abraham SHEK Lai-him, SBS, JP Hon Albert CHAN Wai-yip Hon Andrew LEUNG Kwan-yuen, SBS, JP Hon WONG Ting-kwong, BBS Hon Ronny TONG Ka-wah, SC Hon CHIM Pui-chung Hon Paul CHAN Mo-po, MH, JP Hon Tanya CHAN Hon IP Wai-ming, MH Hon Mrs Regina IP LAU Suk-yee, GBS, JP Hon Paul TSE Wai-chun Dr Hon Samson TAM Wai-ho, JP
Members absent	:	Hon Starry LEE Wai-king (Deputy Chairman) Hon Vincent FANG Kang, SBS, JP
Public officers attending	:	<u>Agenda Item IV</u> Mr Edward YAU Tang-wah, JP Secretary for the Environment

Action

Mr Roy TANG Yun-kwong, JP
Deputy Secretary for the Environment

Mr Frankie LAM
Principal Assistant Secretary for the Environment (Financial Monitoring)

Agenda Item V

Ms Annie CHOI Suk-han, JP
Deputy Secretary for Commerce and Economic Development (Commerce and Industry)3

Mr YAU Kin-chung
Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry) Special Duties

Mr WONG Shiu-ming
Head of Consumer Protection Bureau
Customs and Excise Department

Agenda Item VI

Miss Janice TSE, JP
Deputy Secretary for Transport and Housing (Transport)5

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

Mr FUNG Kwok-ming
General Manager/Services
Marine Department

Attendance by invitation : Agenda Item IV

CLP Power Hong Kong Limited

Mr S H CHAN
Planning Director

Mr Stephen CHAN
Strategic Planning Manager

Ms Rhonda LAM
Public Affairs Manager (Regulatory Affairs)

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

Staff in attendance : Ms Angel SHEK
Council Secretary (1)2

Ms Michelle NIEN
Legislative Assistant (1)9

Action

I Confirmation of minutes and matters arising

(LC Paper No. CB(1)136/08-09 - Minutes of meeting held on 14 October 2008)

The minutes of the meeting held on 14 October 2008 were confirmed.

II Information papers issued since last meeting

(LC Paper No. CB(1)2106/07-08(01) - Tables and graphs showing the import and retail prices of major oil products from June 2006 to May 2008 furnished by the Census and Statistics Department

LC Paper No. CB(1)2141/07-08(01) - Administration's paper on Development of a new cruise terminal at Kai Tak

LC Paper No. CB(1)2142/07-08(01) - Administration's paper on "A Hospitable Hong Kong" Campaign

LC Paper No. CB(1)2219/07-08(01) - Submission on the regulation of the sale of time-share travel opportunities from a member of the public (Chinese version only) (Restricted to Members)

LC Paper No. CB(1)2248/07-08(01) - Tables and graphs showing the import and retail prices of major

		oil products from July 2006 to June 2008 furnished by the Census and Statistics Department
LC Paper No. CB(1)2279/07-08(01)	-	Tables and graphs showing the import and retail prices of major oil products from August 2006 to July 2008 furnished by the Census and Statistics Department
LC Paper No. CB(1)2256/07-08(01)	-	Submission on competition law from ASC(HK) Limited (Chinese version only) (Restricted to Members)
LC Paper No. CB(1)2256/07-08(02)	-	Submission on competition law from a member of the public (Chinese version only) (Restricted to Members)
LC Paper No. CB(1)19/08-09(01)	-	Tables and graphs showing the import and retail prices of major oil products from September 2006 to August 2008 furnished by the Census and Statistics Department
LC Paper No. CB(1)44/08-09	-	Two submissions on the gasoline price in Hong Kong from a member of the public (English version only) (Restricted to Members)
LC Paper No. CB(1)160/08-09(01)	-	Tables and graphs showing the import and retail prices of major oil products from October 2006 to September 2008 furnished by the Census and Statistics Department
LC Paper No. CB(1)245/08-09(01)	-	Administration's paper on Proposed Amendments to the Electricity Supply Regulations)

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

III Items for discussion at the next meeting

(LC Paper No. CB(1)213/08-09(01) - List of outstanding items for discussion

LC Paper No. CB(1)213/08-09(02) - List of follow-up actions)

3. Members agreed to discuss the following three items proposed by the Administration at the next meeting to be held on 16 December 2008, at 4:30 pm:

(a) Report on the public consultation on the competition law;

(b) Replacement and upgrading of Hong Kong Observatory's meteorological facilities to enhance aviation weather services; and

(c) Progress update on Hong Kong Disneyland.

4. Members also agreed that if necessary, the Panel would convene a special meeting to discuss an item proposed by the Environment Bureau and two meeting slots(16 December 2008 at 10:45 am and 22 December 2008 at 4:30 pm) were tentatively reserved for the purpose.

IV Adjustment of electricity tariff made by CLP Power under the new Scheme of Control Agreement

(Ref: ENB CR 1/4576/08 Pt.6 — Administration's paper on CLP Power Hong Kong Limited Castle Peak Power Company Limited 2008 Development Plan issued by Environment Bureau (Legislative Council Brief)

LC Paper No. CB(1)257/08-09(01) *(revised version tabled and issued subsequently via email on 25 November 2008)* — Submission on Adjustment of Electricity Tariff from CLP Power Hong Kong Ltd. (in powerpoint format)

LC Paper No. CB(1)213/08-09(03) — Paper on New Scheme of Control Agreements with the power companies prepared by the Legislative Council Secretariat (Background brief))

Briefing by the Administration

5. At the invitation of the Chairman, the Secretary for the Environment (SEN) said that, further to the signing of the new Scheme of Control Agreements (SCAs) with CLP Power Hong Kong Limited (CLP) and Hongkong Electric Company Limited (HEC) on 7 January 2008, the Administration had been discussing with the two power companies on tariff adjustment. On 23 September 2008, the Chief Executive-in-Council approved CLP's Development Plan covering the period from 1 October 2008 to 31 December 2013 (DP). SEN highlighted the DP's key features, notably the reduction of Basic Tariff by 10% (equivalent to 8.6 cents/kWh) with effect from 1 October 2008. In considering CLP's tariff adjustment, the Administration had critically reviewed the need, timing and proposed budget of the capital projects proposed in DP. In response to the latest development, CLP had agreed to exclude the proposed Liquefied Natural Gas (LNG) terminal project ($10.4 billion) and reduce its proposed capital expenditures from $56.6 billion by 30% to $39.9 billion. Under the new SCA, the permitted rate of return had also been lowered from 13.5%-15% on Average Net Fixed Assets (ANFA) to 9.99% to bring about a reduction in the Basic Tariff. SEN explained that the reduction in the Basic Tariff had been partly offset by an increase in the Fuel Clause Charge (FCC) to cover the rising fuel cost which was not taken into account in the determination of the Basic Tariff under SCA. To address the concern of the public and members about the need for CLP to retain a huge balance in its Tariff Stabilization Fund (TSF) (equivalent to the Development Fund under the old SCA), the Administration had persuaded CLP to draw down its TSF from $2,117 million in end 2007 to about $150 million by end 2009, which would be the lowest since 1982. SEN stressed that the Administration would continue with its efforts to ensure that reliable, safe and efficient electricity supply would be delivered to consumers at reasonable costs and in an environmental-friendly manner.

Presentation by CLP Power Hong Kong Limited

6. With the aid of power-point, Mr S H CHAN, Planning Director of CLP briefed members on the major components of CLP's electricity tariff and mechanism of tariff adjustment. He drew members' attention to the fact that CLP had frozen the Basic Tariff and offered altogether over $4 billion in rebates to customers since 1998. The current tariff adjustment had taken into consideration various factors such as CLP's weakening electricity sales, and lowered permitted rate of return. With the integration of the Special Rebate into the Basic Tariff, the Net Basic Tariff was reduced by 10% with effect from 1 October 2008. Mr CHAN further said that while electricity tariff in major economies had risen significantly as a result of rising fuel prices, CLP had been able to defer FCC increase in the past through prudent fuel cost management. However, the upsurge in fuel prices in the recent years had caused CLP's Fuel Clause Recovery Account to continue to deteriorate and posed a need to reduce the deficit by an increase in FCC by 5.9 cents /kWh. Even with such an increase, it was projected that the Account would accumulate a deficit of about $1 billion by end 2008. The 10% reduction in Basic Tariff was thus moderated by the FCC increase to give an average of 3% reduction in the Net Tariff. He said that CLP would continue to

monitor closely the coal price movements and its impact on FCC with a view to maintaining high quality electricity service at reasonable tariff.

Discussion

Tariff adjustment

7. Mr Andrew LEUNG relayed the concerns of small and medium enterprises about the discrepancies in electricity tariff between residential and non-residential customers. He was disappointed that the average Net Tariff was reduced by merely 3% from its current level, and the Net Tariff reduction for high-consumption customers was even lower, i.e. by less than 1% only.

8. Mr S H CHAN of CLP briefed members on CLP's customer profile which was divided into residential and non-residential customers. Non-residential customers were further classified according to their level of power consumption per month, i.e. General Service Tariff customers, Bulk Tariff customers and Large Power Tariff customers. He explained that as high-consumption customers used to enjoy a lower Basic Tariff (i.e. around some 60 cents/kWh compared to the average of 88.1 cents/kWh for general customers), the 10% reduction of their Basic Tariff was thus smaller in absolute value (i.e. some 6 cents/kWh). After offsetting tbe FCC increase of 5.9 cents/kWh, the Net Tariff was reduced by less than 1%.

9. SEN emphasized that all CLP customers essentially enjoyed the same rate of 10% reduction in the Basic Tariff. It was only due to the initial difference in the Basic Tariff that resulted in the different extents of reduction in the Net Tariff. While the current tariff adjustment mechanism mainly dealt with adjustments in the Basic Tariff, the Net Tariff was still subject to the adjustment in FCC in tandem with the fluctuating fuel prices. He suggested that high-consumption non-residential customers could further discuss with CLP about their concerns.

Load & sales forecast and capital projects

10. Noting from the Legislative Council Brief (ENB CR1/4576/08 Pt.6) issued on 23 September 2008 that the projected average growth in CLP's local sales was 1.9% annually and the Administration's forecast for Gross Domestic Product growth for 2008-2012 was 4.5% per annum and 3.6% in 2013, Mr Fred LI enquired whether the figures would be adjusted in response to the dwindling economic conditions. He was also concerned about the adverse impact of slackening growth in electricity sales on future tariffs given CLP would still be permitted to earn a return of 9.99% on ANFA according to the new SCA. Dr Samson TAM shared this concern and pointed out that the freeze in CLP's Basic Tariff in the past decade was partly attributed to the then relatively higher level of electricity consumption. He was worried that the sluggish growth in electricity demand might create pressure for tariff increase.

11. On electricity demand forecasts, SEN pointed out that most of the 10 major infrastructural projects to be taken forward shortly fell within the geographical

ambit of CLP's service area, so the demand for electricity would likely increase. However, the projected increase would be partly offset by the Administration's continual efforts in promoting energy conservation among the general public, and the declining economic activities.

12. Mr S H CHAN of CLP said that CLP would review its load and sales forecasts from time to time having regard to the changing economic situation. Although CLP projected local sales to grow at an average annual rate of 1.9%, it had recorded a negative growth rate of 0.5% for 2008 up to September, probably attributable to the effectiveness of energy conservation initiatives and weather conditions.

13. Dr Samson TAM noted that some capital projects proposed by CLP were associated with power demand arising from major infrastructures such as new railway. Dr TAM commented that developers concerned should share out the capital costs for additional generating capacities and the responsibility should not be passed on to the public by way of tariff increase.

14. SEN said that 60% of the $39.9 billion capital investments under the revised DP would be expended on new transmission and distribution networks to meet new power demand from new infrastructures, and the remaining 30% on replacement of worn-out or aged equipment as well as improvement works for reducing emissions. He reiterated that the Administration had critically reviewed the need, timing and proposed budget of the capital projects proposed by CLP, and noted that the level of capital investments under the revised DP was roughly comparable to that in the last 5-year Plan. However, due to changes in the economic conditions and the implementation of new energy efficiency initiatives, the load and sales forecast in the revised DP might have to be adjusted in future.

Fuel Clause Charge

15. Noting that FCC adjustments made by CLP had lagged behind corresponding changes in coal price in the past decade, Mr Albert CHAN was worried that the power company would take advantage of this by manipulating the timing of adjustments. He was keen to ensure that the Administration had adequate expertise in monitoring FCC adjustments made by the power company to truly reflect fuel price fluctuations.

16. SEN stressed that FCC operated independently from CLP's other operating costs. It reflected the cost of fuel used for generating electricity and was directly passed onto customers on a reimbursement basis, i.e. difference between the standard cost of fuels and the actual costs would be surcharged or rebated. In monitoring FCC adjustments, the Administration's energy consultant would continue to examine whether the actual fuel costs in relevant procurement contracts between CLP and fuel suppliers were in line with the international trend. In this connection, SEN said that the new SCAs also provided for annual audit to verify relevant accounts and financial records of the power companies.

17. Mr Albert CHAN considered that information related to FCC adjustment should be disclosed to facilitate public monitoring. Mr S H CHAN of CLP responded that reference could be made to the quarterly and annual figures released by the Census and Statistics Department on fuel price movements. Information on CLP's actual expenses on fuels was also made available in the company's annual reports. Due to contractual obligation, the selling price in respect of individual suppliers could not be disclosed for members' reference.

18. In response to Dr Samson TAM's enquiry, Mr S H CHAN of CLP explained that the standard cost of fuels in the Basic Tariff, namely $700 per gigajoules, was a rate agreed between the Government and CLP many years ago. As FCC was adjusted on a reimbursement basis, the standard cost served only as a reference for comparison with the actual cost of fuels to CLP. He assured members that the difference between the standard and actual costs would be fully reflected in the future tariff as a surcharge or a rebate.

Excess generating capacity

19. Mr Albert HO enquired whether the net asset value on new generating facility found to be excessive upon commissioning to meet the latest electricity demand had been excluded from ANFA of CLP in the calculation of permitted rate of return for the company. He was also concerned about the treatment of excess generating capacity, and opined that consideration should be given to sell the surplus electricity to HEC, so as to ease the pressure on the need to increase tariff.

20. Mr S H CHAN of CLP said that all the new generating facilities of CLP had come into operation. Technically speaking, in order to meet the sudden surge in electricity demand at particular moments, the level of generation capacity available had to be higher than the demand under the load and sales forecast, and the portion in question was the reserved capacity. The current level of CLP's reserved capacity was 30% which was considered healthy by international standard. SEN informed members that CLP also sold electricity generated from part of its reserved capacity to the Guangdong Province.

Fuel sources

21. In response to the Chairman's enquiry, Mr S H CHAN of CLP said that CLP adopted a diversified fuel mix, including coal, natural gas and nuclear power, with each category accounted for around one-third of CLP's fuel source portfolio. As CLP had relinquished the use of oil since 1980s, the global fluctuation of oil prices did not have a direct impact on the fuel costs of CLP.

22. Mr Fred LI commended the Administration for its efforts in reaching a consensus with the Mainland authorities in August 2008 on the continuous supply of nuclear electricity and natural gas to Hong Kong in the coming two decades. This would obviate the need for Hong Kong to build a LNG terminal within the territory, thereby reducing capital investment and relieving the pressure for electricity tariff increases. He suggested that CLP should consider increasing the

use of natural gas with a view to improving emission performance unless the price of natural gas was substantially higher than that of coal.

23. SEN said that it was the objective of Hong Kong's energy policy to minimize the environmental impact of energy production. That was the reason for linking permitted rate of return of power companies to their emission performance, whereby penalties or incentives would be provided for under-achievement or over-achievement of emission caps. To encourage power companies to adopt cleaner fuel for power generation, the Administration had striven to secure a stable and long-term supply of natural gas by the Mainland. However, in using more natural gas as fuel, the power companies would need to make further investment on new generating facilities. Nevertheless, SEN assured members that the Administration would exercise prudence in examining the need, timing and budget of related capital projects.

24. Mr S H CHAN of CLP advised that the price of natural gas was about 60% to 100% higher than coal price, lest the difference in the level of investment in capital assets for each. Nevertheless, to meet Government's requirement of improving air quality, CLP planned to gradually increase the use of natural from one-third to around 50% of its overall fuel source portfolio.

25. Mrs Regina IP enquired whether CLP had acquired futures contracts and other hedging tools for coal or foreign currencies with a view to withstanding the impact of coal price and currencies fluctuations. Mr S H CHAN of CLP said that CLP adopted both short-term and long-term contracts in the procurement of coal, and the price was arranged in US dollars. Regarding fuel hedging, he considered that CLP's current practice of meeting its cost reguirement with a mixture of short- and long-term contracts was a prudent and effective approach. On the quality of coal acquired, Mr S H CHAN said that CLP was using ultra low sulphur coal with an average sulphur content of less than 0.3%, which was more environmental-friendly when compared to the general standard of 0.8% to 1% in the market.

26. In response to Mrs Regina IP's further enquiry on the price of nuclear power acquired by CLP, Mr S H CHAN of CLP informed members that CLP had entered into a long-term contract with the Guangdong Nuclear Power Joint Venture Company to buy 70% of the power it produced on an annual cost of around $5 billion. Despite the higher initial capital costs, he pointed out that the operating costs in using nuclear power for electricity generation was lower than using other fuel sources in the long run. Hence, the use of nuclear power was more conducive to stabilizing electricity tariff, besides contributing to a cleaner environment.

27. The Chairman noted from paragraph 19 of the Legislative Council Brief (ENB CR1/4576/08 Pt.6) that CLP would increase its level of natural gas consumption to about 80% of its pre-2003 maximum daily intake in 2010 and then level it off at 70% for 2011-2013 whereas the use of coal would continue to increase. As natural gas was a cleaner fuel than coal, he asked CLP to explain the future direction of reducing natural gas consumption and increasing use of coal.

28. Mr S H CHAN of CLP explained that CLP was currently receiving its natural gas supply from the Yacheng gas field off Hainan Island. In 2008 and 2009, the level of natural gas consumption would be maintained at a lower level because reserve revaluation showed that Yacheng would be depleted early in the next decade. As a new source had now been identified to provide a long-term supply of natural gas to Hong Kong, CLP would gradually raise the usage of natural gas. As some of CLP's power generation units were still coal-fired, it would continue to increase the use of ultra low sulphur coal, rather than coal with higher sulphur content, to meet emission caps requirements.

Tariff Stabilization Fund

29. In response to Mr Fred LI's enquiry, Mr S H CHAN of CLP apprised members that the target reduction in TSF balance (i.e. from $2 117 million in end 2007 to about $150 million by end 2009) would be partially realized by the integration of the Special Rebate of $2.1 cents/kWh into the Basic Tariff under the new SCA. This new arrangement would draw down the TSF balance by around $600 million per year. The revenue was anticipated to fall along with the slackened or negative rate of growth in local sales, which would also account for the upcoming reduction in the TSF balance which would be used to ameliorate tariff increase.

Other issue

30. Mr Albert CHAN urged the Administration to put in place more effective energy-saving measures to improve the environment, such as regulating light pollution caused by advertising signs in the streets.

31. SEN acknowledged that there was still much room to enhance energy conservation in the territory. As stated in the Chief Executive's 2008-2009 Policy Address, the Administration would take forward various initiatives to facilitate migration towards a low carbon economy. On the issue of energy wastage of external lighting, the Administration would conduct a consultancy study and draw on international experience to assess the feasibility of regulating external lighting by legislation. The Panel on Environmental Affairs would be consulted in due course.

V Implementation of Trade Descriptions (Amendment) Ordinance 2008 and subsidiary legislation

(LC Paper No. CB(1)213/08-09(04) — Administration's paper on Implementation of the Trade Descriptions (Amendment) Ordinance 2008 and Subsidiary Legislation

LC Paper No. CB(1)213/08-09(05) — Paper on Trade Descriptions (Amendment) Ordinance 2008 and eight items of subsidiary legislation prepared by the Legislative Council Secretariat (Background brief))

Briefing by the Administration

32. At the invitation of the Chairman, the Deputy Secretary for Commerce and Economic Development (Commerce and Industry) (DS/CED) briefed members that further to the enactment of the Trade Descriptions (Amendment) Ordinance 2008 on 18 June 2008 and the making of eight related pieces of subsidiary legislation in the 2007-2008 session, the Administration planned to bring the legislation into operation on 2 March 2009 and publish the commencement notices in the Gazette in December 2008. She then outlined the three-pronged strategy to be adopted by the Customs and Excise Department (C&ED) in enforcing the new legislation, and the publicity campaign to be carried out by the Administration to alert consumers and to remind retailers of the new requirements.

Discussion

"Trade description"

33. Mrs Regina IP enquired whether the definition of "trade description" covered financial products and services. In her opinion, it was misleading to describe some of the financial products as capital-protected when they were in fact risk-associated.

34. DS/CED explained that the Trade Descriptions Ordinance (Cap 362) (TDO) only applied to goods and did not cover services or financial products. Referring to the concern on the need to also regulate the supply of services, she advised that the Consumer Council (CC) had reviewed the existing measures to protect consumer rights. The Administration was examining the recommendations and aimed to consult this Council and the public on the way forward in due course.

35. The Chairman noticed that with advancement in technology, there were different types of diamond, such as "artificial", "man-made" or "synthetic" diamond. He considered that the Administration should keep pace with the trend and liaise with the relevant trades when reviewing the scope of definitions in respect of diamond or other jewellery products.

36. DS/CED stressed that the Administration had all along maintained close dialogue with the relevant trades, including the use of terminologies which might cause confusion among consumers. For example, as reflected by the gemstone trade, certain customers had experienced difficulty in differentiating natural or treated fei cui, the price of which varied greatly. To help general consumers to

distinguish between these two, the Administration had consulted the gemstone trade, the Gemmological Association of Hong Kong and leading academics in the field when the definition of "natural fei cui" in the legislation was formulated.

Enforcement

37. Noting that C&ED would establish rapid squads and on-call teams to handle complaints lodged by tourists who would only stay in Hong Kong for a short period of time, Mr WONG Ting-kwong sought information on their composition and location. He was keen to ensure that these enforcement teams would arrive at the spots of incidents in a timely manner.

38. The Head of Consumer Protection Bureau, C&ED (H, CPB/C&ED) informed members that there would be two on-call teams, each headed by a Senior Trade Controls Officer, and supported by three Trade Controls Officers and three Assistant Trade Controls Officers. He said that the on-call teams would strive to reach the incident spots at the first instance after receiving the complaints. As the teams would be stationed in the Mongkok office which was close to popular shopping areas for tourists, he expected that the officers would be able to arrive at the spots within about half an hour. In response to Mr WONG Ting-kwong's concern on the consequence of making malicious complaints, H, CPB/C&ED advised that it was an offence under TDO for any person to give false information to officers in C&ED.

39. The Chairman considered that rather than acting on complaints passively, the Administration should be more proactive in enhancing the existing regulatory regime with a view to protecting consumers. DS/CED pointed out that in response to certain unfair trade practices employed by some unscrupulous retailers in the past, the Administration had taken urgent and positive action to strengthen the regulatory tools with a view to tackling these malpractices. The legislative provisions contained in the Amendment Ordinance and the aforesaid subsidiary legislation were targetted at these problem areas.

40. Mr Albert HO expressed support for the new legislative provisions and the three-pronged enforcement approach. Referring to a past television programme reporting about a tourist complaining being cheated by an unscrupulous retailer, he was surprised to note that the retailer was held in handcuffs with face covered. While he had no objection to stepping up enforcement, Mr HO considered it unnecessary to use handcuffs and face cover at the custodian stage because if the retailer was convicted eventually, he would be liable to a fine and imprisonment in the end. DS/CED took note of Mr HO's concern.

41. Mr Albert HO was concerned that tourists could not stay in Hong Kong for too long and there should be a speedier way in processing civil claims made by tourists against unscrupulous retailers. DS/CED advised that the claims had to go through the judicial process. Nevertheless, she understood that on a case-by-case basis, the Travel Industry Council of Hong Kong (TIC) or CC would act on behalf of tourists and liaise with the retailers concerned with a view to obtaining

settlement. Noting the Administration's explanation, Mr HO urged the Administration to enhance protection for tourists when considering CC's recommendations on the new legislative provisions. In this connection, Mr Paul TSE said that the process could be sped up if special arrangements were in place to handle claims from tourists.

42. Mr Paul TSE welcomed the Administration's enforcement strategy as it would be conducive to the healthy development of the local travel industry. However, he expressed grave concern that pending the formulation of the enforcement measures, the responsibility of tackling sales malpractices of unscrupulous shops had fallen on the travel agents. He elaborated that as part of industry regulation, TIC had required all shops receiving tour group visitors arranged by travel agents to comply with the Refund Protection Scheme. In light of the wide media coverage in early April 2007 of incidents concerning some Mainland group visitors suspected of being cheated while shopping in Hong Kong, TIC had extended the time limit for refund from 14 days to 180 days to allow visitors sufficient time in seeking refund. Mr TSE pointed out that the 180-day refund measure was rare in other places and it had put a heavy burden on the travel agents and the retail industry. As the Administration had now strengthened protection for consumers, Mr TSE considered it timely to review whether it was fair and reasonable to continue the measure.

43. DS/CED highlighted that the new legislation sought to prohibit certain misleading and deceptive sales practices in the retail trade and its scope differed from that of the Refund Protection Scheme, as the latter was a measure agreed between TIC and the retail trade with a view to specifically strengthening the
Admin protection for tourists. She undertook to reflect members' concerns to the Tourism Commission.

44. Mr Paul TSE did not subscribe to the Administration's view that the 180-day refund measure was a mutual agreement between TIC and the retail trade. He said that it was at the strong request of the Administration that TIC had implemented such a measure in a hasty manner. The travel agent industry had at that time expressed concern that it was more appropriate for C&ED to step up enforcement to combat the prevalent sales malpractices. Mr TSE stressed that the
Admin Administration should critically review the 180-day refund measure immediately.

45. Mr Paul CHAN expressed support for the new legislation. He noted that according to the Amendment Ordinance, if the selling price of the five types of electronic products in question did not include any basic accessories that were reasonably expected to be included in the price, traders were required to inform potential purchasers of the same before the latter paid for the products. He sought information on the details of enforcement.

46. DS/CED explained that depending on individual circumstances, the court would consider a host of factors, including the description on the package and the prevalent trade practices which might be relevant in determining whether any basic accessories should be reasonably expected to be included in the price of goods. In

reply to Mr Paul CHAN's further enquiry, DS/CED confirmed that the requirement of issuing invoices or receipts providing prescribed information on the five types of electronic products applied to retailers operating in rateable tenements. Operators of small stalls on the streets, regardless of whether they were selling new or second-hand products, were exempted.

VI Re-allocation of berths in Public Cargo Working Areas

(LC Paper No. CB(1)213/08-09(06) — Administration's paper on Progress Report on Re-allocation of Berths in Public Cargo Working Areas

LC Paper No. CB(1)213/08-09(07) — Paper on Re-allocation of Berths in Public Cargo Working Areas prepared by the Legislative Council Secretariat (Background brief))

Briefing by the Administration

47. The Deputy Secretary for Transport and Housing (Transport) (DS/TH) updated members on the result of the exercise of re-allocating berths in Public Cargo Working Areas (PCWAs) upon the expiry of the Berth Licence Agreement (BLA) in July 2008. She outlined the background and outcome of the re-allocation exercise processed through open as well as restricted tenders. On the way forward, DS/TH said that to prepare for the closure of Kwun Tong (KT) and Cha Kwo Ling (CKL) PCWAs in 2011 for planned projects, the Administration would retain any berths surrendered by operators in the future, and encourage the operators at these two PCWAs to relocate to vacant berths in other PCWAs.

Discussion

48. While acknowledging that open tender was a fair and transparent means in re-allocating PCWA berths, Mr Albert HO shared the concern of existing PCWA operators that the existing policy might lead to monopoly by large companies which might price out existing small players in the industry. The operators were worried that since berths had remained vacant after restricted tender, an open tender in the near future would seem inevitable. Mr HO enquired whether the Administration had put in place measures to prevent monopoly and safeguard the interests of existing operators who had been in the trade for many years.

49. DS/TH explained that in taking forward the Director of Audit's recommendation to allocate the right of using PCWA berths through an open and competitive bidding process, the Government had agreed to introduce open tender in a gradual manner in order not to cause major disruption to existing operators. Therefore, only the PCWAs at Western District and Chai Wan, which used to have more vacant berths after the restricted tendering exercises in the past, were

disposed of by open tender in the current exercise. As expected, the impact of open tender on existing operators was relatively small since 79% of existing operators in the two PCWAs had successfully secured a berth. DS/TH added that while the Administration would take into consideration the needs of existing PCWA operators in future re-allocation exercises, it was also important to ensure the diversity of Hong Kong's cargo handling industry and to enhance its competitiveness in terms of service mode and fees.

50. Mr Albert HO pointed out that unlike past re-allocation exercises where berths in a PCWA would be disposed of through restricted tender to existing operators and then by open tender, monopoly could occur in future because if berths in all PCWAs would be put out for open tender at the same time, it would present a business case for large companies to consider submitting bids. As Hong Kong had yet to formulate a general competition law, Mr HO was concerned whether consideration could be given to limit a company and its associated companies from securing more than a certain number of berths in the same PCWA to prevent monopoly. Mr WONG Ting-kwong shared the concern and asked about the outcome of the current open tender exercise.

51. DS/TH remarked that before disposing the berths at Western District and Chai Wan by open tender, the Administration had examined ways to maintain fair competition during the exercise. The Administration noted that Hong Kong was a free market and companies could be set up easily with different names to circumvent the restriction proposed by Mr Albert HO. Moreover, it was difficult to prove that two companies were associated with each other. On the outcome of the open tender exercise, DS/TH advised that a total of 49 tenders had been received: 30 for the 23 berths at the Western District PCWA and 19 for the 13 berths at the Chai Wan PCWA. She highlighted that there was no sign of monopoly because 27 existing operators (79%) had successfully secured a berth. As individual berths in a PCWA were designated for handling specific types of cargo according to the size and location, like general cargo, recyclable materials, bulk materials, containers and cargo arising from outlying island trade, DS/TH believed that monopoly of all berths in a PCWA would unlikely occur because the various types of cargo were handled by different operators.

52. In reply to the Chairman's enquiry, DS/TH explained that 110 (99%) out of 111 bids received from the existing operators had secured berths successfully, and one tender was not accepted because its quoted price was below the reserve price. She said that the 14 berths which remained vacant after the restricted and open tenders would be disposed of through a second round of open tender which commenced on 14 November 2008 and would close on 5 December 2008. Existing operators who were unsuccessful in the last exercise had indicated intention to submit bids for the vacant berths.

53. Mr WONG Ting-kwong recalled that PCWA operators had expressed grave concern about the short duration of consultation on the present re-allocation exercise. He called on the Administration to commence the next consultation process early and well before the lapse of the next three-year BLAs in July 2011.

DS/TH remarked that in consideration of the impacts of the original proposal on existing PCWA operators, the Administration had begun the industry consultation as early as October/November 2007 which was nine months ahead of the expiry of the last BLAs in July 2008. DS/TH said that for the next three years, the Administration would monitor the market situation continuously and commence the industry consultation as early as possible, but she anticipated that it would take some efforts for the Administration to carry out open tenders for berths in more PCWAs.

54. Mr CHAN Kam-lam expressed his support in principle to close the KT PCWA and CKL PCWA in 2011. However, on behalf of the KT District Council (KTDC) and local residents, he raised strong objection to accommodate the 12 paper recyclers at KT PCWA to CKL PCWA from 2011 to 2016. He was very concerned that notwithstanding their objection raised for some time, the Administration had not done anything to relocate the paper recyclers elsewhere. He urged the Administration to identify suitable sites in the next two to three years to re-provision the paper recyclers. Otherwise, the relocation in 2011 would likely be met with strong resistance from KTDC and local residents.

55. DS/TH briefed members on the re-provisioning arrangement. KT PCWA and CKL PCWA had to be closed for the construction of the waterfront promenade and Trunk Road T2. The 12 paper recyclers from KT PCWA had indicated that as they only survived on very little profit margin, they wished to stay and operate in the same PCWA together to achieve economy of scale. As such, the Administration had decided to make use of the limited residual marine frontage at CKL PCWA not required for Trunk Road T2 works to accommodate the 12 paper recyclers at KT PCWA from 2011 to 2016. DS/TH assured members that the proposed location was adjacent to the construction site for Trunk Road T2 and should not cause too much nuisance to the local residents. Nevertheless, in response to the request and suggestion of KTDC, the Administration had undertaken to look at alternative sites and compare their feasibility for the relocation of the paper recyclers. However, it was not promising to find a suitable site. While the Administration would continue to identify suitable sites, individual paper recyclers should also consider relocating voluntarily to the vacant berths available in other PCWAs.

56. Mr CHAN Kam-lam expressed concern that if the 12 paper recyclers would be relocated to part of the construction site for Trunk Road T2, the traffic to be brought to the CKL Road would likely aggravate the already congested situation. Moreover, the noise and water pollution caused by the operation of paper recyclers would impact adversely on the outlook of the water promenade. He urged the Administration to address the grave concerns of KTDC and local residents.

57. Mr Albert CHAN called on the Administration to enhance its planning for new development with a view to ensuring the sustainability of existing operators, in particular those engaged in declining industries such as barge and PCWA operations as their continual operation would help retain many job opportunities.

VII Any other business

Visit to Hong Kong International Airport

58. The Chairman said that the Airport Authority Hong Kong had invited the Panel to visit the Hong Kong International Airport on 20 December 2008. He invited Members to take part in the visit.

59. There being no other business, the meeting ended at 12:47 pm.

Council Business Division 1
Legislative Council Secretariat
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