

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1261/10-11  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/12/09

**Bills Committee on Competition Bill**

**Minutes of sixth meeting on**  
**Monday, 17 January 2011, at 4:30 pm**  
**in Conference Room A of the Legislative Council Building**

**Members present** : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)  
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)  
Hon Albert HO Chun-yan  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Hon Fred LI Wah-ming, SBS, JP  
Dr Hon Margaret NG  
Hon James TO Kun-sun  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon WONG Ting-kwong, BBS, JP  
Prof Hon Patrick LAU Sau-shing, SBS, JP  
Hon Cyd HO Sau-lan  
Hon Starry LEE Wai-king, JP  
Dr Hon LAM Tai-fai, BBS, JP  
Hon CHAN Kin-por, JP  
Dr Hon Priscilla LEUNG Mei-fun  
Dr Hon LEUNG Ka-lau  
Hon CHEUNG Kwok-che  
Hon IP Kwok-him, GBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon Paul TSE Wai-chun  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung

Hon Tanya CHAN

**Members absent** : Hon LEE Cheuk-yan  
Hon CHAN Kam-lam, SBS, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon WONG Kwok-hing, MH  
Hon CHIM Pui-chung  
Hon CHAN Hak-kan  
Hon Paul CHAN Mo-po, MH, JP  
Hon WONG Kwok-kin, BBS  
Dr Hon Samson TAM Wai-ho, JP  
Hon WONG Yuk-man

**Public Officers attending** : Agenda item II

Ms Linda LAI Wai-ming, JP  
Deputy Secretary for Commerce and Economic  
Development (Commerce and Industry)

Miss Cheryl CHOW Ho-kiu  
Principal Assistant Secretary for Commerce &  
Economic Development (Commerce & Industry)  
(Acting)

Mr Desmond HOU Ka-chun  
Senior Economist (Commerce & Industry)  
Commerce & Economic Development Bureau

Mr Michael LAM Siu-chung  
Senior Assistant Law Draftsman  
Department of Justice

Mr David Alan GROVER  
Senior Government Counsel  
Department of Justice

**Clerk in attendance** : Ms Debbie YAU  
Chief Council Secretary (1)6

**Staff in attendance :** Mr Timothy TSO  
Assistant Legal Adviser 2

Mr Ken WOO  
Council Secretary (1)2

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Action

**I Confirmation of minutes**

(LC Paper No. CB(1)1038/10-11 -- Minutes of meeting held on  
29 November 2010

LC Paper No. CB(1)1039/10-11 -- Minutes of meeting held on  
30 November 2010)

The minutes of the meetings held on 29 and 30 November 2010 were confirmed.

**II Meeting with the Administration**

Object, Commencement and Interpretation of the Bill

(LC Paper No. CB(1)1034/10-11(01) -- List of follow-up actions arising  
from the discussion at the  
meeting on 20 December 2010

LC Paper No. CB(1)1034/10-11(02) -- Hon LEUNG Kwok-hung's  
letter dated 20 December 2010  
(Chinese version only)

LC Paper No. CB(1)1034/10-11(03) -- Administration's response to  
CB(1)1034/10-11(01) and (02)

LC Paper No. CB(1)1034/10-11(04) -- Summary of views expressed by  
deputations on the object,  
commencement and  
interpretation of the Bill, and  
the Administration's response

LC Paper No. CB(1)320/10-11(03) -- Assistant Legal Adviser's letter  
and (05) dated 26 October 2010 to the  
Administration and its response)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

3. The Bills Committee requested the Administration to provide written responses to the following concerns/requests –

- (a) the market share level under the "de minimis" approach should be stated in the Bill rather than in the guidelines to be issued by the proposed Competition Commission;
- (b) in relation to the two case law examples (Intel and 11 air cargo carriers) on the imposition of pecuniary penalty by the European Commission quoted in the Administration's paper (CB(1)637/10-11(02)), clarify whether the pecuniary penalty imposed represented global or local turnover of the infringing undertakings;
- (c) whether the Administration would consider amending the Bill to exclude stand-alone rights of action;
- (d) the total number of complaints, with case description, alleging adoption of anti-competitive practices and abuse of market power in various economic sectors received by the Competition Policy Advisory Group (COMPAG) since its establishment in 1997, including those cases where the alleged parties did not rectify its practices even after COMPAG had intervened or COMPAG could not proceed to deal with the cases due to the difficulties in mounting effective investigations; and
- (e) provide information on the interpretation of "market" in overseas competition legislation and the case law examples in other jurisdictions.

Attendance of the Under Secretary for Commerce and Economic Development

4. Mrs Regina IP, Dr LAM Tai-fai and Mr Abraham SHEK expressed concern about the absence of the Under Secretary for Commerce and Economic Development (USCED) at the meeting. The Deputy Secretary for Commerce and Economic Development (Commerce and Industry) explained that in line with the existing practice, as the scrutiny of the Bill had entered the stage of clause-by-clause examination, she would attend the Bills Committee meetings to assist members in examining the clauses.

5. Mr LEUNG Kwok-hung did not subscribe to the Administration's explanation. He considered that USCED, as a principal official appointed under the Accountability System, should attend the meetings of the Bills Committee on behalf of the Administration to answer members' queries and address their concerns. Dr LAM Tai-fai and Mrs Regina IP considered that many policy issues in the Bill still remained unresolved. The Chairman remarked that according to the work plan (CB(1)320/10-11(01)) endorsed by the Bills Committee at the meeting on 9 November 2010, meetings for each subject component should cover discussion on Government's policy considerations and examination of the respective clauses in the Bill.

Date of next meeting

6. The Chairman reminded members that the next meeting of the Bills Committee would be held on 25 January 2011 at 4:30 pm to discuss "Object, Commencement and Interpretation of the Bill".

**III Any other business**

7. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1  
Legislative Council Secretariat  
14 February 2011

**Proceedings of the sixth meeting of  
Bills Committee on Competition Bill  
on Monday, 17 January 2011, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000214 – 000302	Chairman	<p>(a) Opening remarks by the Chairman.</p> <p>(b) Confirmation of minutes of meetings on 29 November 2010 (LC Paper No. CB(1)1038/10-11) and 30 November 2010 (LC Paper No. CB(1)1039/10-11).</p>	
000303 – 001225	Chairman Administration	The Administration outlined its response to members' views and concerns raised at the meeting of the Bills Committee on 20 December 2010 (LC Paper No. CB(1)1034/10-11(03)).	
001226 – 001649	Chairman Mrs Regina IP Administration	<p>Mrs Regina IP referred to the Administration's claim that linking the maximum pecuniary penalty to the infringing undertaking's local turnover only could not achieve sufficient deterrent effect, and questioned why this worked well for Singapore which was a direct competitor of Hong Kong.</p> <p>The Administration explained that the pecuniary penalty was so proposed having regard to the business environment in Hong Kong. It referred to the hypothetical example given in paragraph 4 of CB(1)1034/10-11(03) to illustrate the undesirable outcome of linking the pecuniary penalty to the local turnover only, as the proposed Competition Tribunal (the Tribunal) would not be able to impose pecuniary penalty on infringing undertakings which had been assigned to focus on markets outside Hong Kong under a market allocation arrangement with other infringing undertakings focusing on the Hong Kong market.</p> <p>Mrs IP was unconvinced. She considered that Singapore was presently the major competitor of Hong Kong and the Bill should not undermine Hong Kong's competitiveness in the region. She quoted the example of the mandatory provident fund (MPF) business of The Hongkong and Shanghai Banking Corporation Limited (HSBC) which was promoting itself as the prime provider of MPF service worldwide, and said that it would be grossly unfair to the company to impose pecuniary penalty on its entire global operation if its local MPF service business was found to be infringing the competition rules.</p> <p>The Administration reiterated that the global turnover was only a ceiling, the starting point of the calculation would be the local turnover. Only when this was not enough to sufficiently reflect the seriousness of the anti-competitive</p>	

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		<p>conduct would the global turnover be considered. The law, while providing only civil penalties, needed to have sufficient deterrent effect to guard against practices which would prevent, restrict or distort competition in Hong Kong.</p>	
001650 – 002226	Chairman Mr Jeffrey LAM Administration	<p>Mr Jeffrey LAM urged the Administration to make reference to the Heritage Foundation's latest report which cautioned that the introduction of a statutory minimum wage and the proposed competition law in Hong Kong might erode the status of Hong Kong as the freest economy in the world as this, in his view, would raise the operational risk of the small and medium enterprises (SMEs). He relayed the grave concerns of some Bills Committee members as well as the business sector about the Bill, such as the proposed pecuniary penalty which, in his view, was modelled on the most stringent regime found in other competition jurisdictions. Mr LAM was also concerned that despite Bills Committee members' repeated urge for setting out the "de minimis" arrangements early to allay SMEs' concerns, the Administration had advised that the "de minimis" approach would be devised by the future Competition Commission (the Commission).</p> <p>The Administration responded that it took note of SMEs' worries but advised that international experience had suggested that regulation of SME conduct was seldom a priority of competition authorities as SMEs normally did not possess market power substantial enough to affect market efficiency.</p>	
002227 – 002648	Chairman Mr CHAN Kin-por Administration	<p>Mr CHAN Kin-por did not subscribe to the Administration's argument that multi-national corporations (MNCs) might engage in manipulations through corporate restructuring or accounting methods in the booking of turnover in order to circumvent the pecuniary penalty provision if the penalty was calculated based on local turnover only. He believed that MNCs would not risk infringing the Bill and damaging their long-established reputations. He held the view that the proposed pecuniary penalty was so stringent that it might drive investments away from Hong Kong to other places say Singapore. Mr CHAN requested the Administration to consider setting the pecuniary penalty at fixed levels instead.</p> <p>The Administration emphasized that it was an established practice to set a maximum penalty under the laws of Hong Kong. In the absence of such, there might be situations where the Bill would not be able to provide for adequate sanctions to deal with major contraventions that had gravely lessened competition in Hong Kong and affected consumers deeply.</p> <p>Mr CHAN refuted the Administration's claim that</p>	

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		<p>enterprises might take the pecuniary penalty as part of the operation costs if it was set at a low level, say, 10% of local turnover. He reiterated that enterprises would not run the risk of contravening the new law for the costly consequence of damaging their reputations.</p> <p>The Chairman remarked that the level of pecuniary penalty should be proportional to the seriousness and gravity of the infringements. It was unreasonable to take the turnover of the infringing undertaking's entire global operation into account if the infringement related only to its local operation of a specific product or service.</p>	
002649 – 003735	Chairman Dr LEUNG Ka-lau Administration	<p>Dr LEUNG Ka-lau expressed concern about enforcement outside Hong Kong as it might be difficult, if not impossible, for the Tribunal to take action against an undertaking which did not have any operation in Hong Kong or chose to abandon its operation here if it was found to be involved in contravention of the competition rules. The Chairman shared the views of Dr LEUNG and pointed out that unlike enterprises in the European Union (EU) which could hardly leave a market in the region, a large enterprise making insignificant investment in Hong Kong through its subsidiary might choose to abandon its local operation with ease, and it might be difficult to hold the parent company concerned legally responsible.</p> <p>The Administration advised that according to the Bill, the first and second conduct rules applied to infringing undertakings even if they were outside Hong Kong, and that the judgment of the Tribunal could be enforced outside Hong Kong in some countries via reciprocal country-by-country arrangements.</p> <p>In response to Dr LEUNG's further concern as to whether the turnover of the subsidiary concerned or the turnover of the parent company would be taken into account in the calculation of pecuniary penalty if the subsidiary company was found to have contravened the competition rules, the Administration advised that it should be determined on a case-by-case basis, having regard to the extent of involvement of the parent company in the anti-competitive conduct in question, i.e. whether the parent company had control over its subsidiary or the subsidiary had real autonomy in its action.</p> <p>On Dr LEUNG's concern that large consortia might abuse private action provided under the Bill to harass SMEs, the Administration pointed out that such concern was not substantiated by international experience. Moreover, the Tribunal would be able to strike out vexatious and frivolous lawsuits at the early stage of litigation.</p>	



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003736 – 004447	Chairman Mr Albert HO Administration	<p>Mr Albert HO expressed support for the Bill and considered the claim of the Heritage Foundation that the enactment of a competition law in Hong Kong would undermine its status as the freest market economy unfounded since competition law was in place in most capitalist economies. Mr HO expressed concern that pecuniary penalty should be imposed on turnover that was related to the operation involved in the contravention, i.e. the local product or service market in question, and that penalty such as condemnation or sanction could be considered. Mr HO further considered that contravention which would lead to civil penalties should be clearly stated in the legislation instead of being promulgated through guidelines which should only serve to elaborate on the requirements. As such, to allay the concerns of SMEs, the market share level under the "de minimis" approach should be stated in the Bill rather than in the guidelines to be issued by the Commission.</p> <p>The Administration explained that the Bill sought to regulate conduct which had an impact on competition in Hong Kong, irrespective whether such conduct was carried out within or outside the territory. It should however be noted that in the case of market allocation cartel, all undertakings involved in the cartel should be penalized even if some of them were allocated markets other than Hong Kong.</p>	The Administration to provide information as requested in paragraph 3(a) of the minutes.
004448 – 005226	Chairman Ms Miriam LAU Administration	<p>Ms Miriam LAU noted that Singapore, which had implemented competition law, was a narrow second to Hong Kong in the world's freest economy index published by the Heritage Foundation. She questioned why the Bill did not model on Singapore and take into account local turnover only in the calculation of pecuniary penalty.</p> <p>The Administration advised that it had drawn reference to the competition legislation in major jurisdictions including EU, the United Kingdom (UK) and Singapore in drafting the Bill. In view that many MNCs had set up business in Hong Kong but the revenue earned here might only constitute a minor portion of their total turnover, it was important for the Bill to provide for adequate sanctions to produce sufficient deterrent effect.</p> <p>Noting that SMEs were increasingly worried about the Bill and did not believe that they would not be the target of enforcement, Ms LAU considered that to allay their concerns, the details of the "de minimis" arrangements should be set out in the Bill rather than in the guidelines to be drawn up and promulgated by the Commission after the enactment of the future Ordinance.</p> <p>The Administration explained that the "de minimis" approach came with enormous details which, if to be set</p>	The Administration to provide information as requested in paragraph 3(a) of the minutes.

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		<p>out in the Bill, would not be able to cater for changes in market circumstances in a timely manner. It assured members that setting out the said details in the guidelines by the Commission after the passage of the Bill and before the competition rules came into effect (the transitional period) should largely meet SMEs' wish to have a clearer understanding on the approach.</p> <p>Ms LAU enquired about the Administration's timeframe in completing the deliberation on whether to adopt the "small agreement" approach practised by UK. The Administration responded that this approach would need detailed study as it might invite undertakings to circumvent the Bill by splitting large contracts into smaller ones.</p>	
005227 – 010248	Chairman Mr Ronny TONG Administration Assistant Legal Adviser (ALA)	<p>Mr Ronny TONG referred to the two case law examples on the imposition of pecuniary penalty by the European Commission (EC) quoted in the Administration's paper (CB(1)637/10-11(02)), i.e. Intel for abusing dominant position throughout a period of five years and 11 air cargo carriers for operating a worldwide cartel over a six-year period. He sought clarification on whether the pecuniary penalty imposed represented the legal maximum and whether the two cases would serve as references by the Tribunal in the determination of pecuniary penalty.</p> <p>The Administration advised that while a fine of 4.15% of its turnover in 2008 was imposed on Intel, the fines imposed by EC on two of 11 air cargo carriers would have exceeded the legal maximum of 10% and the amount was thus reduced to this level. The Administration added that the future Tribunal would probably adopt similar approach in its determination of pecuniary penalty.</p> <p>In response to the Chairman's enquiry on whether it was common for the courts in Hong Kong, a common law jurisdiction, to draw reference to the case law examples in EU which was a continental law jurisdiction, Mr TONG advised that as he understood, the Court of Final Appeal had drawn reference to cases in EU.</p> <p>ALA advised that according to his understanding, courts in Hong Kong could make reference to overseas case law but it might not be binding on them. ALA also drew members' attention to clause 91(2) of the Bill which set out the factors that the Tribunal should have regard to in determining the amount of pecuniary penalty.</p> <p>The Chairman requested the Administration to clarify whether the pecuniary penalty imposed in relation to the above two EC case law examples represented global or local turnover of the infringing undertakings.</p> <p>Observing that some SMEs might be over-worried about</p>	The Administration to provide information as requested in paragraphs 3(b) and 3(c) of the minutes.

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		<p>the Bill while some others might be opposed to it, Mr TONG considered that it would be more effective to gain the support of SMEs by not including stand-alone rights of action in the Bill than by introducing the "small agreement" exemptions for SMEs. In this connection, Mr TONG enquired whether the Administration would consider amending the Bill to exclude stand-alone rights of action. The Administration agreed to consider the request in the light of the concerns and worries expressed about the proposed stand-alone rights of action.</p>	
010249 – 010857	Chairman Dr LAM Tai-fai Administration	<p>Dr LAM Tai-fai expressed grave concern about the Administration's reluctance in taking on board members' views expressed time and again on various issues. Dr LAM said that if the Administration held the view that SMEs, which made up 98% of all enterprises in Hong Kong, were not the target of enforcement and should not feel worried, consideration should then be given to exempt all SMEs from the Bill so that resources could be focused on regulating large consortia which held a dominant position in the market. He also opined that SMEs and large consortia should be subject to different levels of penalty as the same contravention by them might bring about significantly different impacts on the local market. Dr LAM also queried about the rationale for the Administration to cap the level of pecuniary penalty at 10%, rather than 9% or 11% of global turnover.</p> <p>The Administration explained that the Bill aimed at eradicating anti-competitive practices which were harmful to Hong Kong no matter whether they were carried out by large, medium or small enterprises. It acknowledged that more serious anti-competitive practices should be subject to heavier penalty and that was why the Bill had set a pecuniary penalty of not exceeding 10% of global turnover of the infringing undertaking as a maximum penalty to achieve a deterrent effect. In dealing with minor contravention of competition rules involving a few SMEs, the Bill provided a commitment mechanism empowering the Commission to accept commitments from the infringing undertaking to discontinue the anti-competitive practice in exchange for cessation of investigation and/or proceedings against the person.</p>	
010858 – 011611	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK queried why the Bill did not apply to government departments as they might be involved in economic activities monopolizing the market.</p> <p>The Administration explained that activities of government departments were non-economic and regulatory in nature or involved provision of essential public services. Non-application of the Bill to government departments, as with the cases in other competition jurisdictions, would help ensure that the important services provided by the</p>	

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		<p>Administration to the public would not be affected. Notwithstanding this, the Administration stressed that government departments would act in accordance with the principles of the future Ordinance.</p> <p>In reply to Mr SHEK's query on the appropriateness of modelling the Bill on legislation in other competition jurisdictions as they might not necessarily provide useful references, the Administration advised that while reference had been drawn from overseas legislation as well as implementation experience in drafting the Bill, the Administration had also exercised due diligence to ensure the provisions borrowed were practicable and suitable in the context of Hong Kong.</p>	
011612 – 012425	Chairman Mr LEUNG Kwok-hung Administration	<p>Mr LEUNG Kwok-hung quoted the speech of Mr Mario MONTI, former European Commissioner for Competition, to support his earlier request for adding a new clause 2 stating that the object of the Bill was to, inter alia, enhance economic efficiency and thus the benefit of consumers through promoting sustainable competition.</p> <p>The Administration explained that the object of the Bill was to enhance economic efficiency and the free flow of trade through promoting sustainable competition to bring benefits to both the business sector and consumers. Enhancing consumer welfare would undoubtedly be one of the outcomes of the Bill.</p> <p>In response to Mr LEUNG's follow-up on his request on the appointment of SME representative(s) to the Commission, the Administration advised that the appointment of SME representative into the Commission was a Government policy. The policy was reflected in section 2(2) of Schedule 5 to the Bill which set out that in considering the appointment of a person as a member of the Commission, the Chief Executive might have regard to that person's expertise or experience in industry, commerce, economics, law, SMEs or public policy. A person possessing expertise or experience in any of the above areas would be considered for appointment to the Commission.</p>	
012426 – 013156	Chairman Mrs Regina IP Administration Dr LAM Tai-fai Mr LEUNG Kwok-hung Mr Abraham SHEK	<p>Mrs Regina IP quoted HSBC's submission (CB(1)1042/10-11(01)) that "pecuniary penalties should be commensurate to the gains derived from the anti-competitive practices, and their maximum amount should be limited to 10% of the total turnover achieved by the infringing party during the course of the preceding financial year on the Hong Kong markets affected by the contravention" and urged the Administration to consider the view seriously.</p> <p>The Administration reiterated that it was important to</p>	

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		<p>provide for adequate sanctions to cater for infringements of varying seriousness and gravity. It emphasized that as with the practice in other competition jurisdictions, the starting point of determining the penalty would be the local turnover. Only when this was inadequate to reflect the seriousness of the infringement would the Tribunal consider imposing a higher penalty.</p> <p>In response to the concerns expressed by Mrs IP, Dr LAM Tai-fai and Mr Abraham SHEK on the absence of the Under Secretary for Commerce and Economic Development (USCED) at the meeting, the Deputy Secretary for Commerce and Economic Development (Commerce and Industry) explained that in line with the existing practice, as the scrutiny of the Bill had entered the stage of clause-by-clause examination, she would attend the Bills Committee meetings to assist members in examining the clauses.</p> <p>Mr LEUNG Kwok-hung did not subscribe to the Administration's explanation. He considered that USCED, as a principal official appointed under the Accountability System, should attend the meetings of the Bills Committee on behalf of the Administration and address members' concerns. Dr LAM Tai-fai and Mrs Regina IP considered that many policy issues in the Bill still remained unresolved. The Chairman remarked that according to the work plan (CB(1)320/10-11(01)) endorsed by the Bills Committee at the meeting on 9 November 2010, meetings for each subject component should cover discussion on Government's policy considerations and examination of the respective clauses in the Bill.</p>	
013157 – 013629	Chairman Mr Paul TSE Administration Prof Patrick LAU	<p>Mr Paul TSE and Prof Patrick LAU requested that, in addition to Appendix I to the Administration's paper (CB(1)1034/10-11(03)) that provided some past complaint cases concerning alleged adoption of restrictive practices and the abuse of market power in various economic sectors received by the Competition Policy Advisory Group (COMPAG), the Administration should provide further details on the total number of such complaints, with case description, received by COMPAG since its establishment in 1997, including those cases where the alleged parties did not rectify its practices even after COMPAG had intervened or COMPAG could not proceed to deal with the cases due to the difficulties in mounting effective investigations.</p> <p>The Administration advised that COMPAG published guidelines on the types of practice that might constitute anti-competitive conduct to encourage voluntary compliance by the business community. However, COMPAG did not possess any enforcement powers that allow for a full investigation to collect information or</p>	The Administration to provide information as requested in paragraph 3(d) of the minutes.

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		evidence to substantiate the complaint cases.	
013630 – 013945	Chairman Mrs Regina IP Administration	<p>Mrs Regina IP shared HSBC's view that the Bill should refer to the notion of dominant position rather than to the notion of substantial degree of market power for the purpose of the proposed second conduct rule. As an undertaking would have possessed substantial degree of market power before it became dominant, the Administration should seek to guard against the more severe type of market power abuse under the Bill.</p> <p>The Administration advised that the notion of substantial degree of market power would be more appropriate in the context of a small-scale economy like Hong Kong.</p>	
013946 – 014433	Chairman Administration Mrs Regina IP	<p><u>Object, commencement and interpretation of the Bill</u> <u>Clause-by-clause examination</u></p> <p><u>Clause 1 - Short title and commencement</u></p> <p>The Administration briefed members on the object, commencement and interpretation of the Bill.</p> <p>In reply to the Chairman's question on the duration of the transitional period, the Administration advised that it was envisaged that at least one year would be required for setting up the Commission and for preparing the guidelines after public consultation. Only after these were completed would different parts of the Bill be commenced on a staggered approach. In reply to Mrs Regina IP, the commencement notices would be subsidiary legislation subject to the scrutiny of the Legislative Council.</p>	
014434 – 014929	Chairman Administration Mr Paul TSE Mrs Regina IP	<p><u>Clause 2 - Interpretation</u></p> <p>The Chairman expressed concern that a definition should be provided for "market" to enhance clarity of the requirement in relation to the second conduct rule.</p> <p>Mr Paul TSE questioned whether the "Women Street", Mongkok, or Hong Kong as a whole would be considered as the market in the case of two stallholders involved in concerted practice in "Women Street". Mr TSE expressed reservation about leaving the definition of market for the Commission to determine.</p> <p>The Administration responded that a market definition was important for competition analysis but it was essentially an economic test. In overseas jurisdictions, the market definition primarily focused on the product (including goods or services) and geographical substitutability. For product substitutability, the competition authorities needed to determine whether a sufficient number of buyers would switch to other products when the seller raised the price of</p>	

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		<p>the product in question by a "small but significant amount" for a "non-transitory" continuous period. From the geographical angle, the question was whether a sufficient number of buyers would switch to a source at another location in response to a small but significant and non-transitory price increase. Since market definition had to be dealt with specifically on a case-by-case basis, and the fact that such a definition was not provided in the legislation in other competition jurisdictions studied, the Administration considered it more appropriate for the future Commission to set out in the guidelines the general principles and consideration for defining a market. The Administration would provide a separate submission to the Bills Committee when discussing the conduct rules to explain the key elements covered by the guidelines on market definition drawn up by other competition jurisdictions.</p>	
014930 – 015439	Chairman Ms Emily LAU Administration	<p>Expressing support for the Bill, Ms Emily LAU urged the Administration to strengthen communication with SMEs to allay their concerns about the Bill, such as by providing them examples of complaints on anti-competitive conduct received by COMPAG to illustrate the ways in which such conduct could be regulated with the enactment of the future Ordinance. Ms LAU also highlighted the significant need of setting out in the principal Ordinance important concepts, such as market definition, to assure SMEs that they would not fall foul of the conduct rules.</p> <p>The Administration reiterated the disadvantages to have the details of the guideline set out in the Bill for the enormous details involved and the lack of flexibility to cater for changes in market circumstances in a timely manner. While the Administration would provide sample guidelines issued by other competition jurisdictions, the local guidelines would be drawn up by the Commission after public consultation.</p>	The Administration to provide information as requested in paragraph 3(d) of the minutes.
015440 – 015519	Chairman Mrs Regina IP	Mrs Regina IP requested that information on the interpretation of "market" in overseas competition legislation and the case law examples in other jurisdictions be provided for discussion of the Bills Committee.	The Administration to provide information as requested in paragraph 3(e) of the minutes.
015520 – 015545	Chairman Administration	Meeting arrangements	