

立法會
Legislative Council

LC Paper No. CB(1)2417/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/12/09

Bills Committee on Competition Bill

**Minutes of thirteenth meeting on
Thursday, 28 April 2011, at 2:30 pm
in the 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
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Hak-kan
Hon CHAN Kin-por, JP
Dr Hon LEUNG Ka-lau
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung

Members absent : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Fred LI Wah-ming, SBS, JP
Dr Hon Margaret NG
Hon Abraham SHEK Lai-him, SBS, JP
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Paul CHAN Mo-po, MH, JP
Hon Paul TSE Wai-chun
Hon Tanya CHAN
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)

Mr Raymond WU Wai-man
Principal Assistant Secretary for Commerce &
Economic Development (Commerce & Industry)

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

Ms Phyllis POON Hon-ying
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

Miss Lilian MOK
Council Secretary (1)7

Action

I Confirmation of minutes

(LC Paper No. CB(1)2004/10-11 -- Minutes of meeting held on 15 March 2011)

The minutes of the meeting held on 15 March 2011 were confirmed.

II Meeting with the Administration

Matters arising from last meeting

(LC Paper No. CB(1)2018/10-11(01) -- List of follow-up actions arising from the discussion at the meeting on 13 April 2011

LC Paper No. CB(1)2018/10-11(02) -- Administration's response to CB(1)2018/10-11(01)

LC Paper No. LS52/10-11 -- Paper on examples of statutory provisions on Director of Audit's examination prepared by the Legal Service Division of the Legislative Council Secretariat

LC Paper No. CB(1)2018/10-11(03) -- Submission from Dr Andrew SIMPSON of the Hong Kong Polytechnic University dated 27 April 2011 (English version only))

Institutional arrangement

(LC Paper No. CB(1)1523/10-11(03) -- Administration's paper on institutional arrangement of the Bill (Chinese version only)

LC Paper No. CB(1)320/10-11(02) -- Administration's information paper on overview of major components of the Competition Bill (paragraphs 3 to 14 on

institutional arrangement)

- LC Paper No. CB(1)1355/10-11(03) -- Summary of views expressed by deputations on the institutional arrangement of the Bill, and the Administration's response
- LC Paper No. CB(1)1523/10-11(04) -- Supplementary summary of views expressed by deputations on the institutional arrangement of the Bill, and the Administration's response
- LC Paper No. CB(1)320/10-11(03) -- Assistant Legal Adviser's letter dated 26 October 2010 to the Administration (clause 143, Part 11 and Schedule 6)
- LC Paper No. CB(1)1034/10-11(05) -- Administration's response to CB(1)320/10-11(03) (paragraphs 15 and 16))

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) in relation to the proposed section 28 of Schedule 5 to the Bill, re-consider the composition of committees that may be established by the proposed Competition Commission (the Commission) such that the chairperson and the majority of members of the committees would be members of the Commission;
- (b) consider including a provision in the proposed section 27 of Schedule 5 to the Bill stipulating that the Director of Audit's power to conduct the examination under subsection (1) shall not operate to entitle the Director to question the merits of the policy objectives of the Commission;
- (c) in relation to the proposed section 32 of Schedule 5 to the Bill,
 - (i) review the use of the words "rules" and "regulating" in

the section to avoid any misunderstanding that the "rules" would be subsidiary legislation to be made under the Bill; and

- (ii) provide information on the rules to be made by the Commission in respect of conflict of interest (including penalty for non-compliance) and consider setting out the rules regarding conflict of interest as well as disclosure of interests in the Bill; and
- (d) in view of the discrepancy between the Chinese and English texts of the proposed section 27(2)(c) of Schedule 5 to the Bill, the Administration agreed to amend the section to achieve consistency;
- (e) advise whether the competition tribunals, if any, of other competition jurisdictions are constituted in the same way as the proposed Competition Tribunal (the Tribunal) under clause 134 and for hearing and determination of applications under clause 144;
- (f) in relation to clause 139 of the Bill, the Administration has agreed to amend subsection (2) in order to tally with other similar provisions in the Bill;
- (g) in relation to clause 140 of the Bill regarding the assessors of the Tribunal, provide details of the remuneration to be paid to an assessor;
- (h) consider taking out the phrase "and whether or not it would otherwise be admissible in civil or criminal proceedings in a court of law" under clause 142(2)(a) and a similar one under clause 146;
- (i) having regard that the Tribunal would be a superior court of record while other tribunals are not, consider whether it is appropriate for the Tribunal to conduct its proceedings with informality;
- (j) in relation to clause 144(3) of the Bill, review whether it is appropriate for the President or the member presiding over a hearing of the Tribunal to have a second or casting vote when there is an equality of votes, and advise whether the same

arrangement is adopted by other tribunals in Hong Kong;

- (k) review the drafting of clause 151(2) of the Bill, in particular the phrase "where it is appropriate to give reasons for a decision"; and
- (l) provide information on the impact of the enforcement of competition law, for example in the aspects of manpower and legal costs, economic efficiency and consumer benefits etc. in other competition jurisdictions.

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on 12 May 2011 from 2:30 pm to 6:30 pm.

III Any other business

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

Council Business Division 1
Legislative Council Secretariat
15 June 2011

**Proceedings of the thirteenth meeting of
Bills Committee on Competition Bill
on Thursday, 28 April 2011, at 2:30 pm
in the Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000805– 000837	Chairman	<p>Opening remarks by the Chairman.</p> <p>Confirmation of minutes of meeting on 15 March 2011 (CB(1)2004/10-11).</p>	
000838 – 001348	Chairman Administration	The Administration outlined its response to members' views and concerns raised at the meeting of the Bills Committee on 13 April 2011 (CB(1)2018/10-11(02)).	
001349 – 001937	Chairman Mr Jeffrey LAM Administration	<p>Discussion on the impacts of the competition law enforcement. The Administration undertook to explore whether there were any other reports for reference of the Bills Committee.</p> <p>Referring to the submission from the Hong Kong General Chamber of Commerce (HKGCC) (CB(1)2056/10-11(02)), Mr LAM commented that the commitment mechanism and "de minimis" arrangements were insufficient to allay the worries of Small and Medium Enterprises (SMEs) as they were still subject to stand-alone private rights of action provided under the Bill. Mr LAM also opined that the regulatory guidelines on the interpretation and implementation of the proposed conduct rules should be clear without ambiguity.</p> <p>The Administration responded that it would brief members on the draft regulatory guidelines as well as the commitment mechanism and "de minimis" arrangements in due course. Given that the future Competition Commission (the Commission) would be required to issue guidelines after consultation with the public and stakeholders, the Administration noted that the draft guidelines to be presented to members would be for illustrative purpose only to facilitate members' scrutiny of the Bill, and the draft guidelines would not be binding on the future Commission.</p>	The Administration to provide information as requested in paragraph 3(1).
001938 – 002354	Chairman Mr CHAN Kin-por Administration	In view of the problems arising from the implementation of the statutory minimum wage, Mr CHAN Kin-por believed that phased introduction of the competition law would better assist the business sector to adapt to the new requirements. He was of the view that exemptions should be granted to SMEs in the early phases of implementation so that public resources could be focused on regulating abuse of market power by large consortia.	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration explained that while the conduct of a SME alone would unlikely have appreciable adverse effect on competition, in the case of many SMEs engaging in an anti-competitive behaviour collectively, their combined market share could be significant enough to cause adverse impact on competition. While considering it not appropriate to exempt SMEs from the Bill, the Administration said that the commitment mechanism and "de minimis" arrangements should address most of the concerns of the SMEs.</p>	
002355 – 002607	<p>Chairman Mr Jeffrey LAM Administration</p>	<p>Mr Jeffrey LAM expressed grave concern that many important and sensitive issues identified now were left to the future Commission to decide while the appointment and functions of it were uncertain.</p> <p>The Administration responded that the relevant supplementary information on the list of functions of the Commission would be presented to the Bills Committee in due course.</p>	
002608– 003048	<p>Chairman Mr Albert HO Administration</p>	<p>Mr Albert HO reiterated his suggestion of establishing a provisional Competition Commission to deal with important issues and formulate the regulatory guidelines, rather than presenting the draft guidelines which would not be binding on the future Commission. Mr HO considered it more desirable to make the regulatory guidelines subsidiary legislation.</p> <p>The Administration explained that even if there were a provisional Competition Commission, it would not have the power to issue guidelines which would be a duty of the future Commission. Nevertheless, the Administration would prepare some sample guidelines for the reference of the Bills Committee. It also noted Mr HO's view about setting up a provisional Competition Commission through administrative means for consideration.</p>	
003049 – 003557	<p>Chairman Mrs Regina IP Administration</p>	<p>Mrs Regina IP agreed that the Administration should draft the regulatory guidelines in clear terms, and provide them as early as possible to enhance public understanding.</p> <p>Given that the competition law was a new and difficult area of law, Mrs IP pointed out that competition expertise was limited in Hong Kong. She expressed concern that if overseas experts would have to be engaged to assist the future Commission and the Competition Tribunal (the Tribunal) in enforcement, local corporations and economy might be subject to heavy foreign influence.</p> <p>The Administration noted that similar to other policy areas, sharing of experience with overseas authorities and engagement of experts from abroad would be helpful at the initial stage to ensure the smooth implementation of a new</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>law. However, the Administration contended that there was also a pool of talents in Hong Kong with diverse background, expertise and industry experience who could help facilitate the effective enforcement of the competition law.</p>	
003558– 003908	Chairman Ms Emily LAU Administration	<p>The Administration noted the views of Ms Emily LAU that there were different experts in Hong Kong and the Government should avoid cronyism in making appointments to various committees. She did not subscribe to the Administration's view that the provisional Competition Commission was not provided in the Bill because the Bill was still under scrutiny and subject to changes. If the establishment of such a body might help the regulatory guidelines to be drawn up for early reference of the Bills Committee and the business sector, it should be pursued.</p>	
003909– 004053	Chairman Mr CHAN Kin-por Administration	<p>Taking into consideration that the court and legal practitioners might interpret the competition provisions in different ways, Mr CHAN Kin-por considered that a clear set of regulatory guidelines with examples would help avoid this and ease the burden of the business sector.</p> <p>The Administration assured members that as provided in the Bill, the future Commission would issue the regulatory guidelines after consultation to ensure relevance of the guidelines to local circumstances and to facilitate compliance with the new law.</p>	
004054 – 004634	Chairman Ms Miriam LAU Administration	<p>Ms Miriam LAU said that she found it difficult to support the Bill unless the regulatory guidelines together with the details of the "de minimis" arrangements could be submitted to the Bills Committee for scrutiny.</p> <p>Given the lack of competition expertise in Hong Kong, Ms LAU expressed concern that it might not be affordable for SMEs to engage overseas experts to handle competition litigations. She therefore urged the Administration to enhance the clarity of the regulatory guidelines to assist the SMEs to comply with the legislation.</p> <p>The Administration explained that the policy intent was to implement the new law in phases after the enactment of the Bill. Provisions relating to the major prohibitions and enforcement would come into force, through a commencement notice (which would be a piece of subsidiary legislation), after a transitional period. During the transitional period, the Commission would draw up the regulatory guidelines upon consultation, and step up publicity as well as public education efforts to assist the public and the business sectors to be prepared for the law.</p> <p>Ms LAU was unconvinced and reiterated that the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>regulatory guidelines should be submitted to the Bills Committee as early as possible for scrutiny. The Chairman also remarked that the Administration should consider the suggestion of Mr Albert HO to set up a provisional body to handle important issues and formulate the regulatory guidelines before the implementation of the law.</p>	
004635 – 004920	<p>Chairman Mr Jeffrey LAM Administration</p>	<p>Mr Jeffrey LAM urged the Administration to take into account the views of different industries on the proposed implementation of the competition law in Hong Kong, and the business sector had hands-on experience in competition-related matters.</p> <p>The Administration reassured members that they were studying the views of different sectors carefully and would revert to the Bills Committee on the "de minimis" arrangements and commitment mechanism in due course.</p>	
004921 – 005452	<p>Chairman Administration</p>	<p>The Administration briefed members on paragraphs 5 to 9 of CB(1)2018/10-11(02).</p>	
005453 – 010817	<p>Chairman Administration Ms Miriam LAU Ms Emily LAU Assistant Legal Adviser (ALA)</p>	<p><u>Schedule 5 – Proposed section 18 – Decisions not invalidated by defects in appointment etc.</u></p> <p>Regarding the proposed section 18(d) of Schedule 5 to the Bill, ALA considered that the Administration should explain the criteria for determining whether an irregularity in the procedures adopted by the Commission would affect the merit of the decision taken and provide relevant examples. Concerning the second option proposed by the Administration to improve the current drafting of the provision, the insertion of the phrase, "in the opinion of the Chairperson of the Commission" might pre-empt the court's ruling. The Administration explained that the purpose of the proposed section was to ensure that the decisions of the Commission would not be invalidated solely by any irregularity in the procedures that did not affect the outcome of the decision taken. The second option provided that the decision of the Chairperson of the Commission was final.</p> <p>After discussing the proposed wordings of the first option, it was agreed that the words "merit of the decision taken" would be replaced by "the decision taken" ("所作的決定"). Members noted that the provision in the original section 18(d) of Schedule 5 was also found in the competition law of Singapore.</p>	
010818 – 011205	<p>Chairman Administration</p>	<p>On the establishment of committees under the Commission, the Chairman opined that the person to be appointed as chairperson of a committee should be a member of the Commission.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that with reference to the appointment mechanisms adopted by other statutory bodies, it was considered more flexible to allow the Commission to determine the composition of its committees and to identify suitable persons with relevant experience and expertise to serve in the committee to best meet the need of the Committee.</p>	
011206 – 012548	Chairman Mr Jeffrey LAM Administration ALA	<p>Mr Jeffrey LAM opined that the Commission should not be allowed to delegate to other persons or bodies its power to make an application to the Tribunal for an interim order.</p> <p>The Administration clarified that as provided in clause 93(1) of the Bill, any person, not only the Commission, would be allowed to apply to the Tribunal for an interim order, and the Tribunal itself could also make such an order if it was satisfied that a person was engaged in or was proposing to engage in anti-competitive conduct. The Bill shared the same principle of making interim orders under other ordinances. A consolidated list of power and functions that could not be delegated by the Commission to its committees would be presented to the Bills Committee in due course.</p> <p>Noting the above, the Chairman expressed concern about the accountability of the Commission if it had delegated its committees the power to apply for an interim order while these committees might not consist of any Commission member. In response, the Administration emphasized that the Commission would closely supervise the committees, and be held responsible for their work.</p> <p>ALA supplemented that there were different ways in composing committees of statutory bodies. He noticed that the Financial Reporting Council, the Airport Authority and the Arts Development Council should appoint one of its members to be the chairperson of the committee. Moreover, in respect of the Financial Reporting Council, the number of committee members who were members of the Council was to exceed the number of those who were not. Members' attention was also drawn to the proposed Committee Stage amendments to clause 16 of the Communication Authority Bill in respect of chairpersonship of committees.</p> <p>The Chairman requested the Administration to re-consider the composition of committees established under the Commission such that the chairperson and majority of members of the committees would be members of the Commission.</p>	The Administration to provide information as requested in paragraph 3(a).
012549 – 012654	Chairman Mr Ronny TONG	Mr Ronny TONG advised that if the Administration decided to disallow stand-alone private rights of action, some parts of clause 93 concerning interim orders might	

Time marker	Speaker	Subject(s)	Action required
		have to be amended.	
012655– 013522	Chairman ALA Administration	<p>ALA briefed members on examples of statutory provisions on Director of Audit's examination (LS52/10-11).</p> <p>The Administration explained that the reason for providing the Director of Audit the additional power to make a copy of the whole or any part of all accounts, records and documents in the custody or under the control of the Commission, including those obtained from undertakings under investigation, was to facilitate the Director of Audit to conduct examination into the Commission. The Director of Audit would have to comply with the information disclosure requirements under Part 8 of the Bill.</p> <p>Separately, the Administration agreed to consider including a provision in the proposed section 27 of Schedule 5 to the Bill stipulating that the Director of Audit's power to conduct the examination under subsection (1) should not operate to entitle the Director to question the merits of the policy objectives of the Commission.</p>	The Administration to provide information as requested in paragraph 3(b).
013523 – 013622	Chairman Administration	<p><u>Continuation of clause-by-clause examination</u></p> <p><u>Schedule 5 – Proposed section 28 – Commission may establish committees</u></p> <p>Members did not raise any queries.</p>	
013623 – 013904	Chairman Administration	<p><u>Schedule 5 – Proposed section 29 – Delegation by Commission</u></p> <p><u>Schedule 5 – Proposed section 30 – Subdelegation</u></p> <p><u>Schedule 5 – Proposed section 31 – Delegation of power to obtain documents and information</u></p> <p>Members did not raise any queries.</p>	
013905 – 015141	Chairman Administration ALA Ms Emily LAU Ms Miriam LAU Mrs Regina IP	<p><u>Schedule 5 – Proposed section 32 – Rules</u></p> <p>Noting ALA's observation that there was currently no provision in the Bill stipulating procedures for handling conflict of interest, members requested the Administration to –</p> <p>(a) review the use of the words "rules" and "regulating" in the section to avoid any misunderstanding that the "rules" would be subsidiary legislation to be made under the Bill;</p> <p>(b) provide information on the rules to be made by the Commission in respect of conflict of interest (including penalty for non-compliance); and</p>	The Administration to provide information as requested in paragraph 3(c).

Time marker	Speaker	Subject(s)	Action required
		(c) consider setting out the rules regarding conflict of interest as well as disclosure of interests in the Bill.	
015142– 015251	Chairman Administration	<u>Schedule 5 – Proposed section 33 – Seal of Commission</u> Members did not raise any queries.	
015252 – 020521		Break	
020522 – 020626	Chairman ALA Administration	In view of the discrepancy between the Chinese and English texts of the proposed section 27(2)(c) of Schedule 5 to the Bill, the Administration agreed to amend the section to achieve consistency.	The Administration to take action as requested in paragraph 3(d).
020627 – 021219	Chairman Administration	The Administration outlined the constitution of the Tribunal (CB(1)320/10-11(02)) and added the following: (a) the Tribunal should be given sufficient power to collect evidence and examine witnesses so that every case could be handled in an objective manner: (b) the Tribunal should be empowered to apply remedies, including penalties, to ensure sufficient deterrent effect on anti-competitive conduct and breach of court orders; and (c) the Tribunal would be established under a judicial model independent of the Commission.	
021220 – 021534	Chairman Administration Mr Jeffrey LAM	<u>Continuation of clause-by-clause examination</u> <u>Clause 133 – Establishment of Tribunal</u> Noting that the Tribunal would be a superior court of record, the Chairman expressed concern about the high litigation fee, and asked whether the Tribunal should be set at the District Court level. The Administration explained that under the Bill, judges of the Court of First Instance (CFI), who were experienced in handling commercial and competition-related cases, would adjudicate on competition cases. As the Tribunal was to conduct its proceedings with as much informality as was consistent with attaining justice, it was believed that legal cost arising from the hearing process should not be substantial. In response to Mr Jeffrey LAM's enquiry, the Administration advised that clause 142 of the Bill specified the powers of the Tribunal.	
021535 – 021839	Chairman Administration Ms Emily LAU	<u>Clause 134 – Constitution of Tribunal</u> Ms Emily LAU asked whether CFI judges would have to act in rotation as duty judge to sit in Tribunal's hearings.	The Administration to provide information as requested in

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration replied that as provided in the Bill, the President of the Tribunal, who was appointed by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission, might appoint one or more members of the Tribunal to hear and determine an application made to the Tribunal.</p> <p>The Administration was requested to advise whether the competition tribunals, if any, of other competition jurisdictions, were constituted in the same way as the Tribunal under the Bill.</p>	paragraph 3(e).
021840 – 022109	Chairman Administration Ms Emily LAU	<p><u>Clause 135 – President</u></p> <p><u>Clause 136 – Deputy President</u></p> <p>Ms Emily LAU enquired whether the President and Deputy President would attend to the Tribunal matters on a full-time basis. The Administration advised that the President and Deputy President of the Tribunal would focus on competition cases brought before the Tribunal. Nevertheless, depending on the actual situation and workload, they might have to handle other litigation cases of the High Court in the capacity of CFI judges when necessary. The Chairman remarked that there might not be many applications made to the Tribunal during the initial implementation of the Bill after enactment.</p>	
022110 – 022313	Chairman Administration	<p><u>Clause 137 – Acting President</u></p> <p><u>Clause 138 – Resignation as President or Deputy President</u></p> <p>Members did not raise any queries.</p>	
022314 – 022629	Chairman Administration Mr WONG Ting-kwong ALA	<p><u>Clause 139 – Vacancy in office of President or Deputy President</u></p> <p>Noting ALA's observation, the Administration agreed to amend subsection (2) of the clause by replacing "<u>may</u> appoint ... " to "<u>is to</u> appoint ...", in order to tally with other similar provisions in the Bill.</p>	The Administration to take action as requested in paragraph 3(f).
022630 – 023045	Chairman Administration Ms Miriam LAU Ms Emily LAU	<p><u>Clause 140 – Assessors</u></p> <p>In reply to Ms Miriam LAU's enquiry about the appointment requirements for assessors, the Administration advised that if the Tribunal considered it necessary, it might appoint specialized experts to act as assessors to assist in proceedings and tap relevant expertise. Similar arrangement was provided under section 53 of the High Court Ordinance (Cap. 4) allowing the court to obtain assistance from any person specially qualified to advise on a matter.</p>	The Administration to provide information as requested in paragraph 3(g).

Time marker	Speaker	Subject(s)	Action required
		The Administration was requested to provide details of the remuneration to be paid to an assessor appointed by the Tribunal.	
023046 – 023246	Chairman Administration	<u>Clause 141 – Jurisdiction of Tribunal</u> Members did not raise any queries.	
023247 – 025251	Chairman Administration Ms Miriam LAU ALA Mr Ronny TONG Mr LEUNG Kwok-hung	<u>Clause 142 – Powers of Tribunal</u> <u>Clause 143 - Procedures</u> In relation to clause 142(2)(a) of the Bill, Ms Miriam LAU expressed grave concern that the present drafting of the clause allowing the Tribunal to receive evidence that would not be admissible in court proceedings, including hearsay evidence, was too broad. The Administration responded that in attaining justice, the Tribunal should be allowed to consider evidence collected from diverse sources. It assured members that clauses 146 and 147 of the Bill had set out the provisions regarding the rules of evidence and evidence that might tend to incriminate. Similar arrangement was provided in section 219 of the Securities and Futures Ordinance (Cap. 571) (SFO). Mr Ronny TONG clarified that the court nowadays had discretion to decide whether to receive hearsay evidence. Noting that there was a higher standard of proof for cases handled by the insider dealing tribunal under SFO, he enquired whether the same should apply to the Bill. The Administration responded that in accordance with clause 146 of the Bill, the Tribunal could not take into account such inadmissible evidence considered in the proceedings in which the Commission applied for an order for a pecuniary penalty under clause 91 or a financial penalty under clause 168. In this connection, Ms Miriam LAU, Mr Ronny TONG and Mr LEUNG Kwok-hung requested the Administration to take out the phrase "whether or not it would otherwise be admissible in civil or criminal proceedings in a court of law". Referring to his letter to the Administration (CB(1)320/10-11(03)), ALA supplemented that as the Tribunal would be a superior court of record, it appeared to be uncommon for such a court to conduct its proceedings with informality as stipulated in clause 143(3) of the Bill. The Law Society of Hong Kong (Law Soc) also considered that the Rules of CFI should normally apply to the Tribunal as it would be established as a superior court of record (CB(1)1219/10-11(02)). The Chairman shared the concern as the Tribunal might impose pecuniary penalty up to 10% of the undertaking's global turnover.	The Administration to provide information as requested in paragraph 3(h).
025252 – 030216	Chairman Mrs Regina IP	In reply to Mrs Regina IP's enquiries about whether overseas judges with competition knowledge and	The Administration to provide

Time marker	Speaker	Subject(s)	Action required
	Administration Mr Jeffrey LAM	<p>experience would have to be engaged in the initial stage of implementation of the competition law, the Administration advised that it had no plan to recruit judges from other jurisdictions, and relevant local and overseas training would be provided to members of the Tribunal during the transitional period.</p> <p>As regards the financial implications, the Administration advised that the estimated full-year expenditure for the Tribunal and the Commission would be about \$15 million and \$67 million respectively, and relevant provisions had been earmarked in the 2011-2012 Budget for preparing the establishment of the Tribunal and the Commission.</p> <p>Discussion on the impacts brought by the enforcement of the competition law in the UK.</p>	information as requested in paragraph 3(i).
030217 – 031533	Chairman Administration ALA Mrs Regina IP	<p><u>Clause 143 – Procedures</u></p> <p>In response to the concerns about the policy for the Tribunal to conduct its proceedings with as much informality as was consistent with attaining justice, the Administration advised that this would provide a less formal framework and expeditious proceedings, thereby easing the burden on smaller enterprises involved in competition cases.</p> <p>As regards the views of Law Soc concerning legal representatives at a hearing (CB(1)1355/10-11(03)), the Administration advised that the Tribunal might decide its own procedures and the Chief Judge would make rules regulating and prescribing the practice and procedure of the Tribunal.</p> <p>In reply to Mrs Regina IP, the Administration confirmed that self-representation would be allowed in the proceedings of the Tribunal.</p>	The Administration to provide information as requested in paragraph 3(i).
031120 – 031846	Chairman Administration Mrs Regina IP Mr Jeffery LAM Mr Ronny TONG Ms Emily LAU	<p><u>Clause 144 – Hearing and determination of applications</u></p> <p>Discussion on Tribunal constitution for hearing and determination of applications and the need for the Tribunal to accumulate experience and expertise in competition law.</p>	
031847 – 033201	Chairman Administration Mr Ronny TONG Mr Alan LEONG Mr LEUNG Kwok-hung ALA Ms Miriam LAU Ms Emily LAU	<p>Members expressed concern about the exercise of the second or casting vote by a presiding member under clause 144(3) of the Bill.</p> <p>Mr Ronny TONG advised that if there was an equality of vote in criminal proceedings, the allegation concerned would generally be classified as unsubstantiated. He understood that in general, the dissenting judge would provide a detailed judgment. He requested the</p>	The Administration to provide information as requested in paragraph 3(j).

Time marker	Speaker	Subject(s)	Action required
		<p>Administration to review the arrangement.</p> <p>Mr Alan LEONG also expressed concern why the President of the Tribunal could appoint any number of members to hear an application which might lead to the need for the member presiding to exercise a second or casting vote. Mr LEUNG Kwok-hung considered it more desirable if the Tribunal was constituted with an odd number of members to hear an application.</p> <p>The Administration said that the proposed arrangements were drawn up in consultation with the Judiciary. It was noted that the Lands Tribunal would also be constituted by one or more of its members to hear an application and adopted the use of a second or casting vote in the event of an equality of votes.</p> <p>Given that the Tribunal would be a superior court of record while other tribunals were not, ALA reiterated that it might not be necessary for it to follow the arrangements adopted by other tribunals.</p>	
033202 – 033301	Chairman Administration Mr Jeffrey LAM	<p><u>Clause 145 – Absence of member during course of proceedings</u></p> <p>In reply to the enquiry of Mr Jeffrey LAM, the Administration responded that if a Tribunal member was absent for any reason after the commencement of any proceedings, the proceedings would have to be suspended without the consent of all the parties to the proceedings.</p>	
033302 – 033719	Chairman Administration Ms Miriam LAU	<p><u>Clause 146 – Rules of evidence</u></p> <p>With reference to the discussion on clause 142(2)(a) of the Bill, the Administration was requested to review the drafting of this clause.</p>	The Administration to provide information as requested in paragraph 3(h).
033720 – 034359	Chairman Administration Ms Miriam LAU Mr Ronny TONG	<p><u>Clause 147 – Evidence that might lead to incriminate</u></p> <p>Discussion on the operation of the clause.</p>	
034400 – 035436	Chairman Administration Mr Jeffrey LAM Mr Ronny TONG Ms Emily LAU	<p><u>Clause 148 – Findings of fact by Tribunal</u></p> <p><u>Clause 149 – Findings of fact by Court of First Instance</u></p> <p><u>Clause 150 – Order not to disclose material</u></p> <p>Discussion whether the "relevant party" could authorize another person to represent him/her in a proceeding.</p>	
035437 – 035639	Chairman Administration Mr Ronny TONG Ms Emily LAU	<p><u>Clause 151 – Decisions of Tribunal</u></p> <p>The Administration was requested to review the drafting of clause 151(2) of the Bill, in particular the phrase "where it</p>	The Administration to provide information as requested in

Time marker	Speaker	Subject(s)	Action required
		is appropriate to give reasons for a decision".	paragraph 3(k).
035640 – 035729	Chairman Administration Ms Emily LAU	<u>Clause 152 – Orders of Tribunal</u> In response to Ms Emily LAU's enquiry about the difference between the "decisions" and "orders" of the Tribunal, the Administration explained that although the Tribunal might not issue an order for its decision made for each and every competition case, any order made by it must be recorded in writing.	
035730 – 035743	Chairman	Meeting Arrangements	

Council Business Division 1
Legislative Council Secretariat
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