

立法會
Legislative Council

LC Paper No. CB(1)824/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/12/09

Bills Committee on Competition Bill

**Minutes of the twenty-second meeting held on
Tuesday, 25 October 2011, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)
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 CHAN Kam-lam, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
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, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
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 Paul CHAN Mo-po, MH, JP
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 Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung

Hon Tanya CHAN
Hon WONG Yuk-man

Members absent : Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon CHAN Hak-kan
Hon Alan LEONG Kah-kit, SC

Public Officers attending : Agenda item II

Mr Gregory SO Kam-leung, JP
Secretary for Commerce and Economic
Development

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

Miss Ada CHEN Kit-yi
Senior Assistant Law Officer (Civil Law) (Acting)
Department of Justice

Mr David Alan GROVER
Senior Government Counsel
Department of Justice

Mr Parmod K SHARMA
Senior Statistician
Census and Statistics Department

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)6

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Sarah YUEN
Senior Council Secretary (1)6

Ms Michelle NIEN
Legislative Assistant (1)6

Action

I Confirmation of minutes

(LC Paper No. CB(1)44/11-12 — Minutes of meeting held on 5 July 2011)

The minutes of the meeting held on 5 July 2011 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)91/11-12(01) — Administration's paper on responses to concerns on the Competition Bill

LC Paper No. CB(1)190/11-12(01) — Speaking note of the Secretary for Commerce and Economic Development
(*tabled at the meeting and subsequently issued on 26 October 2011*)

LC Paper No. CB(1)190/11-12(02) — Submission from Global Sources
(*tabled at the meeting and subsequently issued on 26 October 2011*)

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

Members' views on the proposed amendments

3. The Administration briefed members on its recently proposed amendments (the Proposals) to address concerns over the Bill. Mr Jeffrey

LAM urged the Administration to continue to listen to stakeholders' views and introduce further amendments to address the concerns of small and medium enterprises (SMEs). Mr LAM, Mr WONG Ting-kwong, Mr Paul CHAN and the Chairman queried the appropriateness of using HK\$ 11 million, being the average annual business turnover of SMEs, as the threshold for exclusion from the application of the second conduct rule under the proposed de minimis arrangements (de minimis threshold). In their view, the proposed threshold was too low to the extent that only "micro enterprises" would be excluded. Mr CHAN Kam-lam also called for the setting of a higher threshold in the light of SMEs' views.

4. Mr Fred LI, Dr Margaret NG, Ms Emily LAU and Ms Audrey EU stated acceptance of the Proposals, but stressed that no further concessions on the Bill should be made. Dr NG and Ms EU, in particular, cautioned against further compromises regarding the de minimis threshold. These members and Mr LEUNG Kwok-hung also stressed the need for a review of the Competition Ordinance in two to three years' time after its enactment to examine, inter alia, the need for introducing the stand-alone right of private action. Mr CHAN Kam-lam proposed that the review should be conducted in five years' time.

5. In response, the Administration made the following points –

- (a) the Proposals had been put forward to address the major concerns of SMEs and Members. Despite the amendments, enforcement against hardcore activities had not been, and would not be, compromised since all existing enforcement options in the Bill would continue to be applicable to hardcore conduct. Without undermining the overall effectiveness of the Bill in tackling anti-competitive conduct of concerns to the general public, the Administration would welcome suggestions to further enhance the clarity of the Bill;
- (b) the purpose of the proposed de minimis arrangements was not to exclude SMEs from the application of the Bill but to provide certainty to SMEs that the Bill was meant to catch anti-competitive activities that had an appreciable adverse effect on competition; and
- (c) while there was a need to review the enacted Competition Ordinance in a few years' time, it would be more appropriate to determine the exact time table to review the law after gaining some experience in implementing the law.

6. The Administration also noted the following concerns of members –

- (a) Dr Margaret NG's and Mr Paul CHAN's concern about the proposal to lower the pecuniary penalty by amending the pecuniary penalty cap of 10% of the global turnover of every year of contravention to 10% of the local turnover for each year of infringement, up to a maximum of three years; and
- (b) Dr Margaret NG's and Mrs Regina IP's concern about the non-application of the Bill to statutory bodies.

Follow-up actions

7. To address members' concerns, the Bills Committee requested the Administration to provide written responses to the following concerns/requests regarding the Proposals –

- (a) in respect of the use of HK\$ 11 million, being the average annual business turnover of SMEs, as the threshold for exclusion from the application of the second conduct rule under the proposed de minimis arrangements:
 - (i) provide a paper to explain how the Administration had worked out the above threshold, including the methodology of the Census and Statistics Department in compiling the statistics from which the average annual business turnover of SMEs from 2005 to 2009 at about HK\$ 11 million was derived;
 - (ii) provide a breakdown (by turnover level and by employment size, etc.) of the companies from which statistics had been compiled for working out the above threshold;
 - (iii) seek from the Inland Revenue Department the aggregated data on the turnover levels of companies paying profits tax in Hong Kong for the Bills Committee's reference, so as to give it a full picture of the distribution of Hong Kong companies by their turnover levels;
 - (iv) find out and explain how and why the Administration had decided that under the Companies Bill currently under scrutiny, a private company would be regarded as small if its total annual revenue did not exceed HK\$ 50 million; and
 - (v) provide for comparison and reference details on the thresholds, whether expressed in combined market share or turnover or both, adopted by overseas jurisdictions in their

de minimis framework;

- (b) provide examples of abuse of market power in overseas jurisdictions;
- (c) clearly explain the factors that would be taken into consideration when determining whether an undertaking had "substantial degree of market power", preferably with case law in overseas jurisdictions to shed light on the most common cases of contravention, or involvement in a contravention, of a conduct rule;
- (d) amend clause 141(1)(c) of the Bill to clarify that the "private actions" mentioned therein referred to follow-on actions, since the Administration had already proposed to take out the provisions on the "stand-alone" right of private actions from the Bill; and
- (e) provide a written response in respect of the scope and timing of the review which the Administration would conduct on the enacted Competition Ordinance.

III Any other business

8. The Chairman reminded members that the next meeting of the Bills Committee would be held on 8 November 2011 at 4:30 pm.

Invitation of public views

9. Members agreed to invite the public to give views on the Proposals and to hold a meeting to receive these views.

(Post-meeting note: The Bills Committee held a meeting on 15 November 2011 at 2:30 pm to receive views from deputations on the Proposals.)

10. There being no other business, the meeting ended at 7:20 pm.

Council Business Division 1
Legislative Council Secretariat
11 January 2012

**Proceedings of the twenty-second meeting of
the Bills Committee on Competition Bill
on Tuesday, 25 October 2011, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Confirmation of minutes			
000247 – 000552	Chairman Mr CHAN Kam-lam Mr Jeffrey LAM Ms Emily LAU	Opening remarks. Confirmation of minutes of meeting on 5 July 2011. (LC Paper No. CB(1)44/11-12) Discussion on the date of the meeting to be held for receiving public views on the Administration's recently proposed amendments to the Bill (the Proposals).	
Agenda Item II – Meeting with the Administration			
000553 – 001728	Chairman Administration	Briefing by the Administration on its responses to concerns on the Bill. (LC Paper No. CB(1) 91/11-12(01))	
001729 – 002717	Chairman Mr Jeffrey LAM Administration	Mr LAM's statement of the concerns of the Hong Kong General Chamber of Commerce on the Proposals – (a) critical terms in the Bill, such as "competition" and "abuse" of market power, were yet to be clearly defined; and (b) the appropriateness of the use of HK\$ 11 million, being the average annual business turnover of small and medium enterprises (SMEs), as the threshold for exclusion from the application of the second conduct rule under the proposed de minimis arrangements (de minimis threshold) was doubtful. The Administration's response – (a) the Proposals would provide greater certainty to SMEs to address their concerns; and (b) the exclusion would not apply to agreements involving hard-core activities such as price-fixing, bid-rigging, market allocation and output control because these were widely recognized in overseas jurisdictions as anti-competitive activities that would always adversely affect competition. Mr LAM and the Chairman enquired about whether "one-man" companies or shell companies had been included in the statistics on which the de minimis threshold was based, and pointed out that if these companies were covered, the basis from which the threshold was derived was questionable.	

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		<p>The Administration explained that the above statistics had been compiled from data collected by the Census and Statistics Department's Annual Survey of Economic Activities, which covered firms in all major trades. The definition of SMEs followed that of the Trade and Industry Department, i.e., manufacturing firms which employed fewer than 100 persons, or non-manufacturing firms (including firms engaged in construction) which employed fewer than 50 persons.</p> <p>Mr LAM and the Chairman queried the use of HK\$ 11 million as the de minimis threshold, which in their view was so low that it only excluded "micro enterprises".</p> <p>The Administration explained that the purpose of de minimis arrangements was not to exclude SMEs from the application of the Bill but to provide certainty to SMEs that the Bill was meant to catch anti-competitive activities that had an appreciable adverse effect on competition.</p>	<p>The Administration to provide information as requested in paragraph 7</p>
002718 – 003149	Chairman Mr Fred LI Administration	<p>Mr LI's statement of the stance of Members belonging to the Democratic Party –</p> <p>(a) although they accepted the Proposals, they would not accept any further concessions on the Bill; and</p> <p>(b) a comprehensive review should be conducted on the enacted Competition Ordinance in three years' time to examine its adequacy, in particular the need to reinstate in the Ordinance provisions on the stand-alone right of private action presently proposed to be taken out.</p> <p>The Administration's response –</p> <p>(a) the effectiveness of the Bill would not be affected by the Proposals, which only sought to address major concerns expressed by stakeholders and provide greater certainty to SMEs; and</p> <p>(b) the Administration would review the enacted Competition Ordinance, including the need to introduce the stand-alone right of private action, after gaining more experience in enforcing the Ordinance. It would be more appropriate to determine the exact timing of the review after the law came into effect.</p>	
003150 – 003603	Chairman Dr Philip WONG Administration	<p>Dr WONG's view that price-fixing should not be prohibited across the board because the practice was sometimes necessary for tackling the predatory tactics of the dominant operator.</p> <p>The Administration replied that whether an agreement or conduct would constitute a contravention under the Bill would be a matter of fact and depend on the circumstances</p>	

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		<p>of each case. The Bill would also be able to tackle predatory pricing of an undertaking abusing its substantial degree of market power to crowd out competition in a market.</p>	
003604 – 004323	Chairman Mr CHAN Kam-lam Administration	<p>Mr CHAN indicated support for the Proposals, and emphasized the need to examine SMEs' views and overseas experience when setting the de minimis threshold, which in his view should be higher in recognition that it might be lowered when reviewed in future.</p> <p>The Administration elaborated on the overseas practices regarding the de minimis arrangements, and reckoned that the de minimis threshold expressed in terms of turnover would be preferred to one based on market share because the latter would require a detailed market analysis and provide less certainty to the undertaking concerned. The de minimis thresholds could also be reviewed and adjusted as necessary in future.</p>	The Administration to provide information as requested in paragraph 7
004324 – 005403	Chairman Dr Margaret NG Administration	<p>Dr NG's requests for the Administration to –</p> <ul style="list-style-type: none"> (a) refrain from making further concessions on the Bill, in particular those on the de minimis threshold; (b) conduct a review of the adequacy of the enacted Competition Ordinance within a committed timeframe, so that anti-competitive measures presently proposed to be taken out could be reinstated if necessary. The Administration should also work out review indicators, and submit regular reports to the Legislative Council on the implementation of the Ordinance; (c) respond to the earlier stated concerns of the Consumer Council (CC) about the Proposals; and (d) explain how the business turnover of undertakings would be calculated under the enacted Competition Ordinance. <p>The Administration responded that the Proposals had not undermined the effectiveness of the Bill in tackling anti-competitive conduct. Without losing sight of the purpose of the Bill, the Administration was open to further suggestions from the stakeholders and Members and would review the law after its operation, such as adjustments to the de minimis thresholds and the right of private action. The timing of the review could only be determined after gaining some experience in implementing the law.</p> <p>Dr NG expressed concern about the proposal to amend the originally proposed pecuniary penalty cap of 10% of the global turnover of every year of contravention to 10% of the local turnover for each year of infringement, up to a</p>	

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		<p>maximum of three years.</p> <p>The Administration responded that the above proposal had been made in response to the views of some Members and deputations. The cap might, however, be adjusted in future in light of the actual experience of implementing the Bill. Moreover, for multi-national corporations, being found in breach of the competition rules would tarnish their reputation and this would act as a deterrent on its own.</p> <p>Dr NG expressed the view that it was unfair not to apply the competition rules of the Bill to statutory bodies. The Administration undertook to provide the list of exempted statutory bodies to the Bills Committee in due course, and explained that the relevant exemption criteria were already clearly set out in clause 5.</p>	
005404 – 010054	Chairman Ms Emily LAU Mr CHAN Kam-lam Administration	<p>Ms LAU stressed the need to ensure that no further concessions on the Bill would be made, that the Bill would be enacted early and reviewed in three years' time, and requested that the list of exempted statutory bodies would be provided for the Bills Committee's consideration soon.</p> <p>The Administration's response –</p> <ul style="list-style-type: none"> (a) the Proposals aimed to provide greater certainty to address concern about inadvertent breach of the competition law, without undermining the effectiveness of the Bill in tackling hard-core activities; (b) the Administration remained committed to enacting the Bill early while ensuring that the Bill would suit the local circumstances and follow international best practices as appropriate; (c) whether to introduce the stand-alone right of private action could be considered in the review of the Ordinance after its implementation; and (d) the list of exempted statutory bodies would be provided for the Bill Committee's consideration in due course. 	
010055 – 011000	Chairman Ms Miriam LAU Administration	<p>Ms LAU requested the Administration to –</p> <ul style="list-style-type: none"> (a) ensure that all trades affected by the Bill would be alerted to its implications on them, in particular estate agents, who might no longer be allowed to continue their standard practice of charging 1% of the transacted price as their commission; (b) address SMEs' concerns about inadvertent breach of the enacted Competition Ordinance by providing clear 	

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		<p>guidelines on what, and whether exchange of information, might constitute price-fixing, which would not be excluded from the application of the Bill; and</p> <p>(c) adopt a phased approach in implementing the Bill by taking forward provisions regarding the first conduct rule first.</p> <p>The Administration's explanation –</p> <p>(a) hard-core activities had already been defined in the Bill;</p> <p>(b) exchange of information of aggregate, historical data would not normally be regarded as anti-competitive. In any event, the proposed warning notice mechanism would help alleviate the concerns over inadvertent breach of the law; and</p> <p>(c) the Bill would be implemented in phases and the introduction of the stand-alone right of private action could be considered when Hong Kong accumulated some practical experience of implementing the competition law.</p>	
011001 – 011642	Chairman Mr WONG Ting-kwong Administration	<p>Mr WONG's views –</p> <p>(a) the Proposals were not compromises but amendments necessary for addressing SMEs' concerns about the Bill's implications on their operating environment;</p> <p>(b) the appropriateness of the proposed de minimis threshold was questionable; and</p> <p>(c) it was necessary to exempt statutory bodies, in particular the Trade Development Council, from application of the Bill in recognition of the importance of its work.</p> <p>The Administration explained that the proposed de minimis threshold had been worked out on the basis of objective statistics but the Administration was also open to suggestions to adjust the threshold if the effectiveness of the Bill in tackling anti-competitive conduct was not undermined.</p>	
011643 – 012404	Chairman Mr Paul CHAN Administration	<p>Mr CHAN's query –</p> <p>(a) the appropriateness of adopting the average annual business turnover as the de minimis threshold;</p> <p>(b) the proposal to exclude all agreements between undertakings with a combined turnover not exceeding</p>	The Administration to provide information as requested in

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		<p>HK\$ 100 million in the preceding financial year (or the preceding calendar year if the undertakings did not have a financial year) from the application of the first conduct rule; and</p> <p>(c) the appropriateness of proposing that the pecuniary penalty cap should be 10% of the local turnover for each year of infringement, up to a maximum of only three years, instead of the number of years of contravention.</p> <p>The Administration recapitulated the rationale behind the proposed de minimis threshold, and explained that the three-year cap for the pecuniary penalty had been proposed after considering the views of SMEs and Members, as well as the local circumstances.</p> <p>Discussion on the need to draw reference from the Companies Bill, and on the feasibility and appropriateness of seeking from the Inland Revenue Department the aggregated data on the turnover levels of companies paying profits tax in Hong Kong for the Bills Committee's reference, so as to ascertain the validity of the proposed de minimis threshold.</p>	<p>paragraph 7</p> <p>The Administration to provide information as requested in paragraph 7</p>
012405 – 013247	Chairman Mrs Regina IP Administration	<p>Mrs IP called upon the Administration to address concerns about the non-application of the Bill to statutory bodies, which she considered unfair, and about the adoption of the concept "substantial degree of market power" for determining whether there was abuse of market power.</p> <p>The Administration's response –</p> <p>(a) clause 5(2) had already stated that the Bill might apply to statutory bodies if they met the conditions provided therein; and</p> <p>(b) the future Commission would issue regulatory guidelines to assess the degree of market power and the concept of abuse under the second conduct rule. The concept of "substantial degree of market power" was preferred to the concept of "dominant position" because overseas jurisprudence showed that while market share was only one of the factors in determining the degree of market power, an undertaking possessing a market share of at least 50% would normally be presumed to enjoy a dominant position. This market share threshold might not be appropriate for the oligopolistic structure of certain markets in Hong Kong.</p>	<p>The Administration to provide information as requested in paragraph 7</p>
Break from 013248 to 014000			
014001 – 014817	Chairman Mr WONG Yuk-man Administration	Mr WONG's views against the removal of the payment requirement of a sum not exceeding HK\$ 10 million under an infringement notice –	

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		<p>(a) the HK\$ 10 million was only the maximum payment, and some deputations opined that it was too small to be a real deterrent for big undertakings;</p> <p>(b) the infringement notice would only be issued on a contravention involving serious anti-competitive conduct of the first conduct rule, or a contravention of the second conduct rule;</p> <p>(c) the infringement notice had in fact been introduced to enable the Commission to resolve cases and apply a minimum "punishment" on infringing parties without resorting to the Competition Tribunal (the Tribunal); and</p> <p>(d) the absence of the payment requirement might prompt SMEs to accept the notice and settle with the Commission without putting up a proper fight.</p> <p>Mr WONG proposed to reinstate the original arrangement with the following improvements –</p> <p>(a) enhanced transparency of the criteria for determining the amount of payment;</p> <p>(b) introduction of a review or appeal mechanism on the amount of payment;</p> <p>(c) introduction of a mediation mechanism under which the amount of payment would be determined by a third party or the Tribunal; and</p> <p>(d) enhancement of the deterrent effect of the infringement notice by suspending the payment requirement for the first contravention and demanding payment for both the first and subsequent contravention when there was repeated contravention.</p> <p>The Administration noted the suggestions made by Mr WONG but explained that the removal of the payment requirement had been proposed to address the concerns expressed by SMEs and some Members over the financial burden arising from the infringement notice. Most importantly, infringement notices without payment requirement could still help halt hardcore activities that constituted less severe contravention of the first conduct rule in a timely manner.</p>	
014818 – 015822	Chairman Ms Audrey EU Administration	<p>Ms EU's views –</p> <p>(a) the Administration should not make further concessions on the Bill and should provide a written response in respect of the scope and timing of the review which the Administration would conduct on</p>	

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		<p>the enacted Competition Ordinance; and</p> <p>(b) support of Ms EU and some other members for the Bill would hinge on the Administration's commitment on the review.</p> <p>The Administration reiterated its earlier response in the above regards, and elaborated on the timing of the review as follows –</p> <p>(a) the review might cover the de minimis threshold, the pecuniary penalty cap, the stand-alone right of private action, and the differential treatment of hardcore and non-hardcore activities; and</p> <p>(b) the scope and timing of the review would ultimately hinge on the experience gained in the implementation of the Competition Ordinance.</p> <p>Ms EU called upon the Administration to respond to CC's view that, since the Commission would become the sole channel for redress of consumer grievances against anti-competitive behaviour after the elimination of the stand-alone right of private action, the Commission should be sufficiently funded to enforce the Competition Ordinance.</p>	<p>The Administration to provide information as requested in paragraph 7</p>
015823 – 020425	<p>Chairman Mr LEUNG Kwok-hung Administration</p>	<p>Mr LEUNG's views –</p> <p>(a) the Administration should undertake to conduct a review of all amendments made under the Proposals within a committed timeframe;</p> <p>(b) removal of the payment requirement under an infringement notice would reduce the law enforcement options available to the Commission and hence its power; and</p> <p>(c) elimination of the stand-alone right of private action would defeat the purpose of the Bill because the right was the only means available to consumers to protect themselves.</p> <p>The Administration reiterated that the Proposals had been made to address major concerns of Members and stakeholders.</p>	
020426 – 021229	<p>Chairman Dr LEUNG Ka-lau Administration</p>	<p>Dr LEUNG's concern whether private doctors in a certain district coincidentally charged their patients the same level of fees would constitute a breach of the Competition Ordinance, given the wide scope of the first conduct rule which covered implied agreements not enforceable or intended to be enforceable by legal proceedings, and business conduct having the effect but not the object of preventing, restricting or distorting competition.</p>	

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		<p>The Administration's explanation –</p> <ul style="list-style-type: none"> (a) whether the above case constituted a contravention would be a matter of fact and depend on the circumstances of the case, i.e. whether there was in fact collusion; and (b) the Bill would be necessary as it empowered the Commission: <ul style="list-style-type: none"> (i) to investigate into suspected anti-competitive conduct; (ii) to enter into leniency agreements with persons in exchange for their co-operation in the Commission's investigation into covert anti-competitive arrangements which would be difficult to detect; and (iii) to bring enforcement proceedings before the Tribunal to sanction against anti-competitive conduct and provide remedies to parties suffering from loss or damage as a result of the contravening act. 	
021230 – 022154	Chairman Administration	<p>Chairman's views –</p> <ul style="list-style-type: none"> (a) he supported the Proposals save for the proposed de minimis threshold, which in his opinion was too low; and (b) both combined market share and turnover should be taken into consideration when determining whether an undertaking had "substantial degree of market power". <p>The Administration's explanation –</p> <ul style="list-style-type: none"> (a) the proposed de minimis arrangements had been put forward in response to the call for details of the arrangements in the Bill, instead of setting out the details in the regulatory guidelines to be issued by the future Commission after the enactment of the Bill; (b) the proposed threshold already covered some 85% of the SMEs in Hong Kong; and (c) it would be difficult to implement the proposed “dual track” arrangement covering both the market share and the turnover as the undertaking concerned would have difficulty in ascertaining the degree of its market share in the relevant market without conducting a market analysis and would thus be uncertain of whether the exclusion under the de minimis arrangements would apply to them. 	

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022155 – 022704	Chairman Mr Jeffrey LAM Administration	<p>Mr LAM's view that the Administration should continue to listen to stakeholders' views and make further amendments to the Bill as necessary, especially as the Administration had yet to address certain concerns of SMEs.</p> <p>In response, the Administration said that the procedures for issuing the proposed new instrument of warning notice had been clearly set out in the new clause 80A(2) and the Commission must act accordingly. This should adequately address some stakeholders' concerns about clarity.</p> <p>Mr LAM's enquiries –</p> <ul style="list-style-type: none"> (a) the difference between the warning notice, the infringement notice and the commitment mechanism, in particular their application; (b) the need for as many as three types of enforcement proceedings; and (c) why the Commission and not the Tribunal was empowered to issue the warning notice. 	
022705 – 023336	Chairman Dr LEUNG Ka-lau Administration Assistant Legal Adviser 2 (ALA2)	<p>In response to Dr LEUNG, the Administration explained that since the Administration had already proposed to take out the stand-alone right of private action from the Bill, private actions would no longer be allowed under the Competition Ordinance unless they were follow-on actions for determined contravention (clauses 106 and 115).</p> <p>ALA2's comment on the need to amend clause 141(1)(c) to clarify that the "private actions" mentioned therein referred to follow-on actions, since the Administration had already proposed to take out the provisions on the "stand-alone" right of private actions from the Bill.</p>	The Administration to provide information as requested in paragraph 7
023337 – 023932	Chairman Ms Emily LAU Administration	<p>Ms LAU called upon the Administration to address expeditiously, preferably in November 2011, further concerns of members and stakeholders about the Bill to enable Second Reading debate on the Bill to resume in March or April 2011 to facilitate its enactment within the 2011-2012 legislative session.</p> <p>The Administration said that building on the consensus forged by the Proposals, it remained committed to enacting the Bill as soon as practicable.</p> <p>Chairman's advice –</p> <ul style="list-style-type: none"> (a) additional meetings of the Bills Committee were being scheduled to expedite the scrutiny of the Bill; and (b) the Administration should meet with stakeholders 	

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		<p>and members separately to explain to them how the Proposals could address their respective concerns, so that the Bills Committee could expedite its work by concentrating on clause-by-clause examination of the Bill.</p>	
023933 – 025317	<p>Chairman Dr LEUNG Ka-lau Administration Mr James TO</p>	<p>Dr LEUNG enquired about whether the allocation of resources by private hospitals to affiliated specialists would amount to abuse of market power.</p> <p>The Administration's explanation –</p> <p>(a) whether an undertaking possessed a substantial degree of market power and abused such power would be a matter of fact and could only be determined after an in-depth assessment involving a market study; and</p> <p>(b) market share aside, other factors such as the barrier to entry into the market and the need for quality control would also be taken into consideration in determining whether an undertaking had contravened the second conduct rule. The Commission would be empowered to investigate into the case after the enactment of the Bill.</p> <p>Members stressed the need for clear explanation of the factors that would be taken into consideration when determining whether an undertaking had "substantial degree of market power", preferably with case law in overseas jurisdictions to shed light on the most common cases of contravention, or involvement in a contravention, of a conduct rule.</p> <p>The Administration's and the Chairman's view –</p> <p>(a) the Administration had been and would continue to meet with individual sectors and stakeholders to address their specific concerns; and</p> <p>(b) the Bills Committee should focus on clause-by-clause examination of the Bill to facilitate its enactment within the 2011-2012 legislative session.</p>	<p>The Administration to provide information as requested in paragraph 7</p>