

立法會
Legislative Council

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by the Administration)

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Bills Committee on Competition Bill

**Minutes of the twenty-fourth meeting held on
Tuesday, 15 November 2011, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

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 LEE Cheuk-yan
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, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Hak-kan
Hon CHAN Kin-por, JP
Hon WONG Kwok-kin, BBS
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 Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Cyd HO Sau-lan
Hon Paul CHAN Mo-po, MH, JP
Dr Hon LEUNG Ka-lau
Hon WONG Yuk-man

Public Officers attending : Agenda item I

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)

Attendance by invitation : Agenda item I

Session I

Hong Kong Far Infrared Rays Association

Mr Edward CHAN Kwok-man
Chairman

Hong Kong Small and Medium Enterprises
Association

Dr Stephen KWOK Chun-pong
President

Individual

Dr Andrew SIMPSON
Assistant Professor
School of Accounting and Finance
The Hong Kong Polytechnic University

The Hong Kong Electronic Industries Association

Professor CHAN Kei-biu
Honorary Chairman

Federation of Hong Kong Industries

Mr Jimmy KWOK
Deputy Chairman

Hong Kong Metal Merchants Association

Mr LAI Hin-fai
Chairman

Economic Synergy

Mr Elves LEUNG
Member

Hong Kong Business Community Joint Conference

Mr Aaron SHUM
Secretary – General

The Hong Kong Metals Manufacturers Association

Mr Michael YU Lee-ming
Permanent Honorable Chairman

Momentum 107

Mr HO Man-kit
Convener

Hong Kong Jewelry Manufacturers' Association

Mr Ricky LAM
Chairman

The Chinese General Chamber of Commerce

Mr David FONG
Vice Chairman

Hong Kong Motor Vehicles Import and Export Association

Mr Paul LO
Chairman

Federation of International SME

Mr Gary LO
President

The Hong Kong General Chamber of Small & Medium Business

Mr David TING
President

The Toys Manufacturers Association of Hong Kong

Mr Lewis LUK
Executive Vice-President

Individual

Mr Hans MAHNCKE
Senior Coordinator
Office of the Provost
City University of Hong Kong

Jan Cheong Sing Hardware

Mr CHING Yue-kwok
Manager

Hong Kong Retail Management Association

Mr Charlie WOOD
Representative

The Federation of Hong Kong Watch Trades & Industries Ltd.

Mr Joseph CHU Kai-to
Chairman

Session II

Individual

Dr Robert HANSON
Scholar

The Lion Rock Institute

Mr Dan RYAN
Director

Institution of Dining Art

Mr Simon WONG
Chairman

Community Development Initiative

Mr Michael MO Kwan-tai
Senior Project Executive

Individual

Ms CHAN Shu-ying
Tuen Mun District Councillor

Individual

Mr Peter WONG
Columnist

Hong Kong Construction Association

Ms Alice TO
Legal Advisor

Hong Kong General Chamber of Commerce

Mr Stephen CROSSWELL
Chamber Member

打破政府壟斷大聯盟

Mr LAI Ming-hung
Representative

Land Dragon Real Estate Agency

Mr LEE King-leung
Managing Director

Property Agencies Association

Mr Tony KWOK
Chairman

Kowloon Watch Group

Dr WONG Kam-shing
Managing Director

Taxi & P.L.B. Concern Group

Mr CHAN Man-kin
Committee member

Hong Kong Young Industrialists Council

Mr CHEUNG Wah-keung
Vice President

Consumer Council

Ms Connie LAU
Chief Executive

Mr Victor HUNG
Chief Research and Trade Practices Officer

Mr Thomas CHENG
Chairman, Working Group on Competition Bill

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 Meeting with deputations and 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)372/11-12(01) — Submission from Hong Kong Small and Medium Enterprises Association
- LC Paper No. CB(1)345/11-12(01) — Submission from Dr Andrew SIMPSON, Assistant Professor, School of Accounting and Finance, The Hong Kong Polytechnic University
- LC Paper No. CB(1)345/11-12(02) — Submission from Federation of Hong Kong Industries
- LC Paper No. CB(1)292/11-12(01) — Submission from Hong Kong Metal Merchants Association
- LC Paper No. CB(1)292/11-12(02) — Submission from Economic Synergy
- LC Paper No. CB(1)292/11-12(03) — Submission from The Chinese General Chamber of Commerce
- LC Paper No. CB(1)372/11-12(02) — Submission from Professor Hans MAHNCKE, Senior Coordinator, Office of the Provost, City University of Hong Kong
- LC Paper No. CB(1)292/11-12(04) — Submission from Jan Cheong Sing Hardware
- LC Paper No. CB(1)292/11-12(05) — Submission from Hong Kong Retail Management Association
- LC Paper No. CB(1)292/11-12(06) — Submission from Institution of Dining Art

- LC Paper No. CB(1)292/11-12(07) — Submission from Community Development Initiative
- LC Paper No. CB(1)292/11-12(08) — Submission from Mr Peter WONG
- LC Paper No. CB(1)318/11-12(01) — Submission from Hong Kong Construction Association
- LC Paper No. CB(1)318/11-12(02) — Submission from Hong Kong General Chamber of Commerce
- LC Paper No. CB(1)345/11-12(03) — Submission from 打破政府壟斷大聯盟
- LC Paper No. CB(1)372/11-12(03) — Submission from Hong Kong Young Industrialists Council
- LC Paper No. CB(1)318/11-12(03) — Submission from Consumer Council
- (LC Paper No. CB(1)292/11-12(09) — Submission from Cathay Pacific Airways Limited
- LC Paper No. CB(1)292/11-12(10) — Submission from Ms Kiwi CHAN
- LC Paper No. CB(1)292/11-12(11) — Submission from Professor Mark WILLIAMS, The Hong Kong Polytechnic University
- LC Paper No. CB(1)292/11-12(12) — Submission from The Chinese Manufacturers' Association of Hong Kong
- LC Paper No. CB(1)292/11-12(13) — Submission from Global Sources
- LC Paper No. CB(1)318/11-12(04) — Submission from The Hong Kong Association of Banks
- LC Paper No. CB(1)318/11-12(05) — Further submission from Global Sources
- LC Paper No. CB(1)345/11-12(04) — Submission from Environmental Services Contractors Alliance (Hong Kong)
- LC Paper No. CB(1)372/11-12(04) — Submission from The British Chamber of Commerce in Hong Kong
- LC Paper No. CB(1)372/11-12(05) — Submission from Concern Group for a Competitive Exhibition Industry in Hong Kong)

The Bills Committee received views from the 35 deputations attending the meeting (index of proceedings attached at **Appendix**).

2. While the deputations attending the meeting mostly indicated support for the package of amendments to the Bill (the proposals) recently proposed

by the Administration to address major concerns of stakeholders, deputations from the business sector also expressed the following three major views (the three major views) –

- (a) 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 (the de minimis threshold) was too low and should be adjusted upwards. In setting the de minimis threshold, reference should be made to the following:
 - (i) the financial criteria for a company to list in the Hong Kong Exchanges, i.e. having a revenue of at least HK\$500 million for the most recent audited financial year, or profits of at least HK\$20 million recorded in the most recent year;
 - (ii) the definition of SMEs in the guidelines adopted by the European Union (EU) and Singapore, being undertakings with annual turnover of no more than 40 million Euros and 100 million Singapore dollars respectively; and
 - (iii) HK\$250 million as proposed by the Federation of Hong Kong Industries (FHKI);
- (b) a phased approach should be adopted for implementing the Bill, by first introducing the second conduct rule to prohibit the abuse of a substantial degree of market power, followed by the first conduct rule against anti-competitive agreements, in order to address concerns over monopoly and sectors such as fuel companies, supermarket chains and property developers, etc; and
- (c) the composition of the Competition Commission (the Commission) should be broadened to include members coming from different sectors, such as the science and technology sector, SMEs, etc.

3. Apart from the three major views, some deputations also considered it unfair for exempting statutory bodies from the application of the competition rules. Some questioned the effect of the proposed warning notice mechanism for non-serious anti-competitive agreements.

4. Noting the different views expressed in paragraph 2(a) above on the proposed de minimis threshold, Ms Miriam LAU called upon SMEs to make efforts to achieve a consensus on the threshold. In response to the Chairman, 11 deputations attending Session I of the meeting indicated preference for setting the de minimis threshold at HK\$500 million. FHKI considered its proposed HK\$250 million-threshold reasonable, and pointed out that it might not be desirable to adopt EU's threshold as some deputations proposed because the operation of SMEs in EU was very different from that of Hong Kong. However, FHKI also agreed that the threshold should be able to effectively protect SMEs, and that the higher the threshold, the greater the protection would be. In this regard, as Ms LAU proposed, the Hong Kong General Chamber of Commerce (HKGCC) agreed to consult its members on whether a de minimis threshold of HK\$500 million was agreeable.

HKGCC

5. Expressing reservation about the Bill, Mrs Regina IP asked the deputations whether they in fact preferred shelving the Bill instead of implementing it by phases as proposed in paragraph 2(b) above. In response, all but one of the deputations attending the first session of the meeting said they would rather not have the Bill and, if it was to be taken forward, some urged that its implementation be deferred in view of the current economic downturn, as a result of which many SMEs were already struggling to survive.

6. While agreeing to provide a detailed written response to deputations' views after the meeting, the Administration gave a preliminary response as follows –

- (a) the Administration was open to suggestions to adjust the proposed de minimis threshold provided that they were supported by objective data and would not undermine the overall effectiveness of the Bill in tackling anti-competitive conducts of concern to the public. A paper to explain how the Administration had worked out the above threshold would be provided for the meeting on 22 November 2011 to facilitate further discussion on the threshold;
- (b) the phased approach proposed by deputations to stagger the implementation of the first and the second conduct rules would significantly undermine the deterrent effect of the Bill, as the second conduct rule alone would not be able to tackle those concerns over suspected anti-competitive conduct in the retail and wholesale sectors as recently reported in the press. No overseas jurisdictions adopted such an approach in respect of the conduct rules equivalent. In any event, the Commission would

first draw up the regulatory guidelines on the interpretation and implementation of the conduct rules, and conduct public education to raise the public awareness of the legal requirements and facilitate compliance with the law before the conduct rules were brought into operation. This transitional period was expected to take at least a year; and

- (c) the composition of the Commission had already been clearly set out in the Bill. Notwithstanding, the Administration would give further consideration to the views expressed by Members and deputations in this regard.

7. Concluding the meeting, the Chairman requested the Administration to provide a detailed response to the views and concerns expressed at the meeting and in the submissions.

Admin.

8. The Chairman reminded members that the next meeting of the Bills Committee would be held on 22 November 2011 from 4:30 pm to 7:30 pm.

II Any other business

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

Council Business Division 1
Legislative Council Secretariat
30 March 2012

**Proceedings of the twenty-fourth meeting of
the Bills Committee on Competition Bill
on Tuesday, 15 November 2011, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000538 – 000700	Chairman	Opening remarks	
Agenda Item I – Meeting with deputations and the Administration			
<i>Session I</i>			
000701– 001329	Hong Kong Far Infrared Rays Association (FIRA)	<p>While it welcomed the package of amendments to the Bill (the proposals) recently proposed by the Administration to address major concerns of stakeholders, FIRA also made the following points –</p> <p>(a) the Administration should clarify remaining uncertainties surrounding the Bill, particularly those about the "de minimis" arrangements, and the membership and composition of the Competition Commission (Commission). The membership of the Commission should consist of more representatives from SMEs and trade organizations instead of non-trade members;</p> <p>(b) the Administration should implement the Bill by phases beginning with the second conduct rule; and</p> <p>(c) SMEs should not be unfairly targeted by the Bill because illegal trade practices which they might commit, such as those related to decoration works at new public rental housing (PRH), or bid-rigging for repair works for old buildings, could already be tackled by existing laws, and SMEs were not in a dominant position in the market to enable them to engage in predatory pricing.</p>	
001330 – 001846	Hong Kong Small and Medium Enterprises Association (HKSMEA)	Presentation of views (LC Paper No. CB(1)372/11-12(01) tabled at the meeting)	
001847 – 002342	Dr Andrew SIMPSON Assistant Professor School of Accounting and Finance The Hong Kong Polytechnic University	Presentation of views (LC Paper No. CB(1)345/11-12(01))	
002343– 002731	The Hong Kong Electronic Industries Association (HKEIA)	<p>HKEIA welcomed the proposals but expressed the following views –</p> <p>(a) the Bill should be implemented by phases to avoid</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>undermining the synergy in innovation and technology as a result of over-regulation;</p> <p>(b) 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 (the de minimis threshold) was too low and should be adjusted upwards. Instead, the financial criteria for a company to list in the Hong Kong Exchanges should be adopted as the threshold; and</p> <p>(c) the composition of the Commission should be broadened to include representatives from the science and technology sector.</p>	
002732 – 003111	Federation of Hong Kong Industries (FHKI)	Presentation of views (LC Paper No. CB(1)345/11-12(02))	
003112 – 003410	Hong Kong Metal Merchants Association	Presentation of views (LC Paper No. CB(1)292/11-12(01))	
003411 – 003746	Economic Synergy	Presentation of views (LC Paper No. CB(1)292/11-12(02))	
003747 – 004126	Hong Kong Business Community Joint Conference (BCJC)	<p>BCJC expressed the three major views as highlighted in paragraph 2 above as well as the following views –</p> <p>(a) there was no need for the Bill to tackle illegal trade practices such as those related to decoration works at new PRH, or bid-rigging for repair works for old buildings because they could already be tackled by existing laws; and</p> <p>(b) the Administration had shifted the focus of the Bill from an anti-trust law to a competition law which would only undermine the business environment of SMEs and Hong Kong's free economy while sparing large consortia.</p>	
004127 – 004529	The Hong Kong Metals Manufacturers Association (HKMMA)	<p>HKMMA considered the proposals regretful for the following reasons –</p> <p>(a) the Bill still could not effectively tackle monopoly because firstly, it could not regulate predatory pricing behaviour. Secondly, it would not apply to statutory bodies or their specified activities, such as tunnel tolls, the franchised services of MTR Corporation Limited (MTRCL) and franchised buses. Thirdly, merger regulation would be restricted to telecommunications carrier licensees only. Fourthly, the Commission would not study the market structures of different trades;</p> <p>(b) the Administration had yet to address SMEs' concern</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>that exchange of trade information and negotiation with foreign enterprises might constitute price fixing or market allocation;</p> <p>(c) the Bill was complicated and would incur high compliance costs;</p> <p>(d) the recently proposed de minimis threshold was too low; and</p> <p>(e) 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 maximum of three years would not benefit SMEs most of which conducted their business locally.</p> <p><i>(Post-meeting note: HKMMA's submission was subsequently issued vide LC Paper No. CB(1)390/11-12(01) on 18 November 2011.)</i></p>	
004530 – 004950	Momentum 107	<p>Momentum 107's views –</p> <p>(a) Government intervention in the market should be kept to the minimum but if the Bill was to be taken forward, the Bill should also apply to statutory bodies because Hong Kong people's livelihood was adversely affected by monopolies created by the Government and statutory bodies. For example, denial of Tseung Kwan O residents of red minibus and green taxi services because of the Government's transport policy tilted in favour of MTRCL; the Trade Development Council's monopoly of the local exhibition market; the Hong Kong Mortgage Corporation Limited's monopoly of the re-mortgage market using public funds; the Hongkong Post's unfair competition with private courier service providers using public resources and facilities, etc.; and</p> <p>(b) the additional cost incurred to comply with the Bill would be a heavy burden for SMEs but not for large enterprises. SMEs would hence be rendered more vulnerable when competing with large enterprises while legal professionals would benefit.</p>	
004951 – 005357	Hong Kong Jewelry Manufacturers' Association (HKJMA)	HKJMA expressed the three major views, and added that because the compliance costs were a heavy burden for SMEs, the Bill would not help promote Hong Kong's economy but would only make it more difficult for SMEs to survive during the current economic downturn.	
005358 – 005612	The Chinese General Chamber of	Presentation of views (LC Paper No. CB(1)292/11-12(03))	

Time marker	Speaker	Subject(s)	Action required
	Commerce (CGCC)		
005613 – 005916	Federation of International SME (FISME)	<p>FISME expressed the following views –</p> <ul style="list-style-type: none"> (a) there remained uncertainties regarding a number of issues including the definition of market power and hence concern about the compliance costs. As such, a phased approach might be necessary for implementing the Bill; (b) it might be unfair to exclude statutory bodies from the application of the Bill; and (c) although FISME supported fair competition, it did not consider the Bill preferable because in its present form the Bill would only undermine the sustainability of SMEs but not enhance competition. 	
005917 – 010256	The Hong Kong General Chamber of Small & Medium Business (HKGCSMB)	<p>While indicating support for the introduction of the Bill, HKGCSMB also expressed the three major views, and reservation 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 maximum of three years. In its view, the cap should be revised to 30% of the local turnover to enhance deterrent effect.</p>	
010257 – 010750	The Toys Manufacturers Association of Hong Kong (TMAHK)	<p>TMAHK expressed the following views –</p> <ul style="list-style-type: none"> (a) implementation of the Bill should be deferred one year considering the current economic downturn and that SMEs already had to struggle to survive in the coming year; (b) the de minimis threshold should be set at HK\$500 million for both the first and the second conduct rules; (c) whether an act would constitute contravention of the first conduct rule should, as the Hong Kong General Chamber of Commerce had earlier suggested, hinge not on its object but on whether it had the effect or likely effect of significantly preventing, restricting or distorting competition; (d) as to the second conduct rule, the concept of "dominant position" was preferred to "substantial degree of market power" as it could be clearly defined; and (e) to prevent abuse, issue of the proposed new instrument of warning notice should be kept 	

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		confidential until action was taken against the undertaking concerned.	
010751 – 011215	Mr Hans MAHNCKE Senior Coordinator Office of the Provost City University of Hong Kong	Presentation of views (LC Paper No. CB(1)372/11-12(02) tabled at the meeting)	
011216 – 011537	Jan Cheong Sing Hardware	Presentation of views (LC Paper No. CB(1)292/11-12(04))	
011538 – 011916	Hong Kong Retail Management Association	Presentation of views (LC Paper No. CB(1)292/11-12(05))	
011917 – 012146	The Federation of Hong Kong Watch Trades & Industries Ltd. (FHKWT&I)	FHKWT&I expressed the three major views, and concern that instead of targeting large consortia, the Bill might only affect SMEs.	
012147 – 012603	Chairman Administration	<p>The Administration's response –</p> <p>(a) the Administration was open to suggestions to adjust the proposed de minimis threshold provided that they were supported by objective data and would not undermine the overall effectiveness of the Bill in tackling anti-competitive conducts of concern to the public. The Administration would provide for the meeting on 22 November 2011 a paper to explain how the above threshold had been worked out ;</p> <p>(b) the phased approach proposed by deputations to stagger the implementation of the first and the second conduct rules would significantly undermine the deterrent effect of the Bill, as the second conduct rule alone would not be able to tackle those concerns over suspected anti-competitive conduct in the retail and wholesale sectors as recently reported in the press; and</p> <p>(c) the composition of the Commission had already been clearly set out in the Bill. Notwithstanding, the Administration would give further consideration to the views expressed by members and deputations in this regard.</p> <p>The Administration undertook to provide a written response to deputations' views after the meeting.</p>	The Administration to provide information as requested in paragraph 6
012604– 013013	Chairman Ms Miriam LAU	Ms Miriam LAU considered it ironic that SMEs, which the Bill presumably aimed to help, were concerned about	

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	FHKI	<p>it and, noting the diverse views expressed on the proposed de minimis threshold, called upon SMEs to make efforts to achieve consensus on the threshold.</p> <p>In response to the Chairman, 11 of the 20 deputations attending Session I indicated preference for setting the de minimis threshold at HK\$500 million.</p> <p>FHKI's views –</p> <p>(a) the HK\$250 million-threshold proposed in its submission was reasonable, and it might not be desirable to adopt the European Union (EU)'s threshold as some deputations proposed because the way in which SMEs in EU operated differed from that of Hong Kong; and</p> <p>(b) the threshold should be set at a level which could protect SMEs effectively, and that the higher the threshold, the greater the protection would be.</p>	
013014 – 013548	Chairman Mr Jeffrey LAM TMAHK FIRA	<p>Mr Jeffrey LAM opined that the proposals, in particular that on the de minimus threshold, could not address all concerns of the business sector and SMEs. Moreover, due to the lack of legal professionals specializing in competition law, the enacted Competition Ordinance would be prone to abuse. In response to him, the following deputations expressed views as follows –</p> <p>(a) TMAHK pointed out that toys manufacturers were apprehensive of the substantial time and costs that might be incurred from complying with the Bill, especially as the economy was already anticipated to worsen in the following year. Hence its proposal to defer enactment or implementation of the Bill. SMEs would welcome a bill that could tackle monopoly, and not a bill which might render existing trade practices such as franchising illegal; and</p> <p>(b) FIRA opined that since the Administration had refused to exempt all SMEs from the application of the Bill, the proposed de minimis threshold should be sufficiently high to address their concerns about inadvertent contravention of the enacted Competition Ordinance and about high compliance costs.</p>	
013549 – 014126	Chairman Mr Albert HO Administration HKSMEA	<p>Mr Albert HO expressed the following views –</p> <p>(a) it was unfair to claim that certain members supported the Bill because as legal professionals, they might so benefit. In fact, there was a strong public call for the enactment of the Bill;</p> <p>(b) the proposals might be able to help the community</p>	

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		<p>adapt to the Bill which was complicated. However, the enacted Competition Ordinance so amended should be reviewed three years after implementation;</p> <p>(c) as to the phased approach or deferral proposal made by deputations, considering that the Commission would need time to draw up the regulatory guidelines on the interpretation and implementation of the conduct rules during the transitional period, the Bill would in effect not be enforced until more than a year later. There might therefore not be a need to defer its implementation;</p> <p>(d) the Commission should be broadly representative with representatives of SMEs, and that there should be thorough consultation on the regulatory guidelines; and</p> <p>(e) there was a need to seriously examine whether statutory bodies should be exempted from application of the Bill.</p> <p>In response to the Chairman, some deputations indicated agreement to exempting statutory bodies from application of the Bill and some indicated disagreement. HKSMEA further suggested that whether exemption should be granted should be examined on the basis of whether the statutory body concerned was competing with the private sector.</p>	
014127 – 015121	Chairman Mrs Regina IP HKJMA Mr Hans MAHNCKE HKEIA BCJC FHKI HKSMEA HKMMA	<p>Mrs Regina IP expressed the opposition of New People's Party to the introduction of the Bill in recognition of SMEs' concerns about it and the significant cost incurred by the Commission for engaging economists and competition lawyers, who by defining what constituted anti-competitive acts might even indirectly control Hong Kong's economy. In response to her on whether it might be better to withdraw the Bill than to defer it, various deputations made the following views –</p> <p>(a) HKJMA opined that SMEs could only accept the Bill in recognition that there would be sufficient support in the Legislative Council (LegCo) for passing the Bill;</p> <p>(b) Mr Hans MAHNCKE said that an evidence-based approach should be adopted to decide whether the Bill should be taken forward;</p> <p>(c) HKEIA stated that SMEs opposed to the Bill because in its present form the Bill could only target SMEs but not large consortia. However, SMEs could do nothing if the Administration would not withdraw the Bill;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(d) BCJC elaborated that because the public had been misled by the Administration into believing that the Bill would enable them to enjoy cheaper goods and services, LegCo Members were inclined to support the Bill to secure their LegCo seats. SMEs were also afraid that they might turn the public against them if they insisted on opposing the Bill;</p> <p>(e) FHKI pointed out that SMEs had indicated support for the Bill because when they were first briefed on it in 2006, its focus was on tackling monopoly. The Bill however turned out to be a competition bill incurring significant compliance costs. SMEs therefore hoped that the de minimis threshold could be adjusted upwards;</p> <p>(f) HKSMEA also indicated SMEs' support for the Bill if it could tackle monopoly, especially that of fuel companies and supermarket chains. However, it was unclear how the Bill in its present form could achieve this purpose, or benefit the general public and the economy, considering that the compliance costs might very likely be passed onto consumers; and</p> <p>(g) HKMMA expressed concern that with its merger regulation restricted to telecommunications carrier licensees only, the Bill could not tackle monopoly. HKMMA also agreed with Mr Hans MAHNCKE on the need for an evidence-based approach, and suspected that the Bill was targeted at SMEs.</p>	
<i>Break from 015122 to 020249</i>			
<i>Session II</i>			
020250 – 020323	Chairman	Opening remarks	
020324 – 020736	Dr Robert HANSON Scholar	Dr Robert HANSON expressed opposition to the Bill, and said that legal professionals who were also LegCo Members should preserve their independence at all times, and respect separation of powers by not voting on the Bill because they could profit from its enactment as evidenced by overseas experience. In his view, the Civic Party promoted the Bill for the business opportunities it could bring them. To preserve the rule of law, LegCo should consider forbidding any LegCo Members who were also legal professionals to vote on the Bill. SMEs should also unite against the Bill for the high compliance costs it would incur.	
020737 – 021054	Lion Rock Institute (LRI)	<p>LRI's views –</p> <p>(a) considering the high legal costs incurred by the Bill, it was doubtful whether legal professionals were promoting the Bill to profit from it;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the Administration should seriously examine the economic and legal impacts of the Bill and where necessary, withdraw or withhold it. As shown by the Singaporean experience, non-politically connected SMEs and foreign companies were the only targets of its competition law; and</p> <p>(c) the unsatisfactory competitive environment in Hong Kong had been caused by Government-business collusion and Government favouritism for certain companies, which the Bill could not address.</p>	
021055 – 021329	Institution of Dining Art (IDA)	IDA briefed members on its submission (LC Paper No. CB(1)292/11-12(06)), and added that instead of targeting SMEs, the Bill should target serious anti-competitive acts, such as those committed by fuel companies and supermarket chains.	
021330 – 021740	Community Development Initiative (CDI)	<p>CDI briefed members on its submission (LC Paper No. CB(1)292/11-12(07)), and supplemented the following points –</p> <p>(a) the proposals were regretful for making too many concessions. Further concessions must not be made;</p> <p>(b) CDI did not agree that LegCo Members who were legal professionals should not vote on the Bill;</p> <p>(c) as evidenced by overseas experience, competition laws could help prevent anti-competitive acts; and</p> <p>(d) there was a need to tackle such anti-competitive acts as those recently reported in the press, especially as a survey conducted by World Economic Forum showed that Hong Kong was faring badly in the areas of "extent of market dominance" and "effectiveness of anti-monopoly policy".</p>	
021741 – 022121	Ms CHAN Shu-ying Tuen Mun District Councillor	<p>Ms CHAN Shu-ying expressed the following views –</p> <p>(a) the grassroots supported the Bill because they were suffering from price-fixing by supermarket chains and fuel companies, and bid-rigging in building repairs. It was therefore agreeable that the de minimis arrangements would not apply to the above hardcore activities;</p> <p>(b) if LegCo Members who were legal professionals should not vote on the Bill, Members who came from the commercial sector should also abstain because they also had conflict of interest. Moreover, to safeguard the commercial sector's</p>	

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		<p>interests, the Administration had already made many concessions;</p> <p>(c) it was hoped that the community could achieve a consensus to support the Bill because, as a result of the proposals, legal actions against anti-competitive acts could only be instituted by the Commission, thereby reducing the risks of abuse of the Bill. Moreover, the pecuniary penalty cap had also been significantly lowered; and</p> <p>(d) the Administration should not make further concessions but should ensure early enactment of the Bill to better protect Hong Kong's free market and consumer rights.</p>	
022122– 022550	Mr Peter WONG Columnist	Mr Peter WONG briefed members on his submission (LC Paper No. CB(1)292/11-12(08)), and said that the de minimis arrangements could not protect SMEs from inadvertent contravention of the Bill. Instead, the Bill would only make it more difficult for SMEs to survive.	
022551 – 022653	Hong Kong Construction Association	Presentation of views (LC Paper No. CB(1)318/11-12(01))	
022654 – 023112	Hong Kong General Chamber of Commerce (HKGCC)	Presentation of views (LC Paper No. CB(1)318/11-12(02))	
023113– 023513	打破政府壟斷大聯盟	The 大聯盟 briefed members on its submission (LC Paper No. CB(1)345/11-12(03)), and highlighted Government's unfair treatment of public light buses (PLBs) by denying them use of the Tsing-Ma Bridge and charging them the highest vehicle licence fees to render them powerless to compete with MTRCL.	
023514 – 023749	Land Dragon Real Estate Agency (LDREA)	<p>LDREA's views –</p> <p>(a) SMEs' sustainability might be affected by the Bill because they could ill afford the legal costs so incurred should they inadvertently contravene the enacted Competition Ordinance. As such, it was important that free legal advice or assistance on the Ordinance be provided for SMEs during the transitional period; and</p> <p>(b) the Bill might be abused by property buyers to avoid paying their estate agents commission. The litigation so arising might drag on for a long time incurring significant legal costs, thereby affecting the livelihood of the estate agents concerned.</p>	
023750 –	Property Agencies	PAA's views –	

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024212	Association (PAA)	<p>(a) the Bill would greatly affect SMEs' sustainability. SMEs had indicated support for it because, when consulted on it a few years back, the Bill was presented as an anti-monopoly bill. However, at present its targets seemed to have become SMEs and not large consortia;</p> <p>(b) SMEs were at present already struggling to survive because of the minimum wage requirement, financing difficulties, and rental increase. Despite the proposals, the Bill would still be difficult to comply with;</p> <p>(c) SMEs were making great contributions to Hong Kong. Members should carefully consider whether the Bill should be passed to impose restrictions on SMEs' operation, thereby affecting their sustainability and the job security of their employees; and</p> <p>(d) the operation of trade organizations would be affected by the enacted Competition Ordinance because, as PAA understood, they could no longer discuss pricing issues for fear of committing the criminal offence of price-fixing.</p>	
024213 – 024625	Kowloon Watch Group (KWG)	<p>KWG expressed opposition against the introduction of the Bill because Government intervention was not conducive to economic development, and SMEs should be allowed to freely compete in the market. Market forces alone could already effect regulation.</p> <p><i>(Post-meeting note: KWG's submission was subsequently issued vide LC Paper No. CB(1)390/11-12(03) on 18 November 2011.)</i></p>	
024626 – 024729	Taxi & P.L.B Concern Group	<p>The Concern Group considered it unfair that the Bill would not apply to MTRCL, which enjoyed monopoly in public transport to the detriment of taxis and PLBs, and was making excessive profits from property development as well as its Octopus Card and advertising businesses.</p> <p><i>(Post-meeting note: The Concern Group's submission was subsequently issued vide LC Paper No. CB(1)390/11-12(02) on 18 November 2011.)</i></p>	
024730 – 025155	Hong Kong Young Industrialists Council	<p>Presentation of views (LC Paper No. CB(1)372/11-12(03) tabled at the meeting)</p>	
025156 – 025500	Consumer Council (CC)	<p>CC briefed members on its submission (LC Paper No. CB(1)318/11-12(03)), pointed out that the Bill would help suppress prices, and called upon members to pass the Bill early to tackle such anti-competitive acts as those recently reported in the press.</p>	

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025501 – 025858	Chairman Administration	<p>While agreeing to seriously consider the deputations' views, the Administration made the following clarifications –</p> <ul style="list-style-type: none"> (a) when the Administration consulted the public on the framework of the Bill in 2006, the intention and the public aspiration had all along been that both anti-competitive agreements such as price-fixing (first conduct rule), as well as the abuse of market power (second conduct rule), would be covered by the competition law; (b) there were no criminal liabilities for infringing the competition rules under the Bill; (c) the Bill was aimed at ensuring a level playing field where the market force could operate freely and competitors could compete fairly in terms of price and quality of the goods or services; (d) MTRCL was not a statutory body within the meaning of the Bill, thus not exempted outright; and (e) the proposals, in particular the warning notice mechanism, could address SMEs' concerns about inadvertent contravention of the law and compliance costs. 	
025859 – 030340	Chairman Mr Jeffrey LAM HKGCC	<p>HKGCC made the following points on the warning notice in response to Mr Jeffrey LAM –</p> <ul style="list-style-type: none"> (a) if the anti-competitive act committed was serious, the undertaking concerned would not be alerted to the act through the issue of a warning notice even though the undertaking was very small. This was because the notice would only be issued if the Commission had reasonable cause to believe that the undertaking had contravened the first conduct rule only, and that such contravening conduct did not meet the descriptions of hardcore activities; (b) if the undertaking above ceased the contravening conduct upon being issued the warning notice, other parties to the agreement concerned who felt their interests so affected could take civil proceedings to sue the undertaking for breach of contract and seek compensation, unless a notice was issued by the Tribunal to terminate the agreement concerned or declare it void; and (c) the warning notice should be kept confidential because no due process had been carried out to determine whether the act concerned was really anti-competitive and actionable. 	

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030341 – 030952	Chairman Mr Albert HO PAA Dr Robert HANSON	<p>Mr Albert HO made the following points –</p> <p>(a) he did not agree with Dr Robert HANSON that LegCo Members who were legal professionals should not scrutinize bills that might benefit them because there were already provisions on handling conflict of interest in the rules and procedures of LegCo, such as those on declaration of interest and abstention from voting; and</p> <p>(b) PAA needed not be concerned that discussion on pricing issues would constitute price-fixing because the act would need to have the object or effect of distorting the market before it would be actionable.</p> <p>PAA explained that notwithstanding (b) above, the enacted Competition Ordinance might still affect the free flow of ideas at meetings of trade organizations, and might even lead to abuse of legal actions. As such, in recognition of the current economic downturn, the Bill should not be introduced.</p> <p>Dr Robert HANSON explained that the enacted Competition Ordinance would in the public perception be undermined if legal professionals scrutinized it, voted for it and then made substantial profits from practising it.</p>	
030953 – 031639	Chairman Ms Emily LAU CC Administration	<p>Ms Emily LAU made the following points –</p> <p>(a) the Democratic Party supported the Bill in recognition of public calls for it and the need to tackle such anti-competitive acts as those recently reported in the press;</p> <p>(b) in recognition of deputations' concerns about the Bill, CC should help explain the Bill to them to assure them; and</p> <p>(c) the Administration should consider whether the enacted Competition Ordinance could be implemented by phases as the Copyright (Amendment) Bill 2011, so that sufficient public education on the Ordinance would be conducted before its enforcement.</p> <p>CC's views –</p> <p>(a) apart from public education, education of the relevant trades was also necessary to ensure understanding of the Bill in recognition of its complexity and wide implications. CC had been actively promoting public engagement in this regard since 1992, and had in fact already prepared pamphlets and flyers to explain the benefits which</p>	

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		<p>the Bill could bring to consumers and SMEs; and</p> <p>(b) the proposals could already address SMEs' concerns about inadvertent contravention of the enacted Competition Ordinance and compliance costs.</p> <p>The Administration reiterated the reasons given above for not implementing the conduct rules by phases and emphasized that the rules would not come into force immediately upon enactment but after the transitional period when the community, including the business sector, was prepared for the implementation of the law. In this regard, the Commission would be established first to draw up, following consultation with the relevant stakeholders, the regulatory guidelines on the interpretation and implementation of the conduct rules, and to conduct public education. The transitional period was expected to take at least one year.</p>	
031640 – 032133	Chairman Mr WONG Ting-kwong CC	<p>Mr WONG Ting-kwong requested CC to comment on the following views –</p> <p>(a) the de minimis threshold was too low; and</p> <p>(b) the absence of a clear definition of the market in the Bill would give rise to high compliance costs.</p> <p>CC's responses –</p> <p>(a) even if an undertaking had an annual turnover above the de minimis threshold, it would still be a question of fact as to whether or not the undertaking possessed a substantial degree of market power, taking account of the circumstances of each case. Even if that undertaking really possessed a substantial degree of market power, the second conduct rule would still not apply unless the undertaking abused that power by engaging in conduct that had as its object or effect the prevention, restriction or distortion of competition in Hong Kong; and</p> <p>(b) competition laws in other major competition jurisdictions did not have a legal definition on "market". Market definition would depend on facts of each case, and there was no single formula by which market definition analysis would be conducted. Many overseas jurisdictions such as EU had guidelines on how "market" would be defined for the purpose of the competition law and as such, the methodology concerned was already very clear. Moreover, since the Commission would become the sole channel for redress of consumer grievances against anti-competitive behaviour after</p>	

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		<p>the elimination of the stand-alone right of private action, the Commission should be trusted to perform its roles fairly to address concerns about abuse of legal actions.</p>	
032134 – 032557	<p>Chairman Mr LEUNG Kwok-hung</p>	<p>Mr LEUNG Kwok-hung expressed the following views –</p> <ul style="list-style-type: none"> (a) it should be written in the Bill that whether consumers would at the end benefit was a major criterion for determining whether an act was anti-competitive, and that legal actions should be taken whenever consumers' interests were affected because the objective of the Bill was to protect them. Moreover, the undertakings concerned would be able to defend themselves at the court if they were innocent; (b) SMEs should not be exempted from the Bill because the proposals had already been put forward to address their concerns. Instead, special legal aid could be provided for them. The lack of market definition was also not a concern because this might only mean that there was difficulty in taking legal actions against SMEs; (c) all laws could provide business opportunities for legal professionals. This should not be a reason for denying LegCo Members who were legal professionals the right to scrutinize the Bill; and (d) considering the controversies surrounding the Bill at this point of time, the Bill might not be passed during the 2011-2012 session. 	
032558 – 033100	<p>Chairman Mr Jeffrey LAM HKGCC</p>	<p>Mr Jeffrey LAM sought HKGCC's views on the following –</p> <ul style="list-style-type: none"> (a) what actions an enterprise should take upon receipt of the infringement notice if it wished to prevent follow-on actions from being taken against it; and (b) how overseas jurisdictions determined whether a conduct might constitute abuse of market power. <p>HKGCC's responses –</p> <ul style="list-style-type: none"> (a) if the enterprise concerned made an admission of contravention and commitment to accept the terms of the infringement notice issued to it, the act would create a ground for follow-on actions; and (b) whether a conduct might constitute abuse of market power involved very complex legal and economic issues and could only be determined during 	

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		<p>litigation. As such, competition laws overseas had the effect of discouraging enterprises from adopting new measures to compete and reducing competition. For example, small retailers co-operating to bulk purchase goods from the supplier to ensure lower prices might constitute contravention. In fact, in recognition of such impact Canada had amended its competition law in 2010, as a result of which enterprises in breach of the second conduct rule would only be warned first.</p>	
033101-033513	<p>Chairman Ms Miriam LAU HKGCC</p>	<p>In response to Ms Miriam LAU, HKGCC expressed the following views –</p> <ul style="list-style-type: none"> (a) the drafting of the relevant clauses mattered more than the de minimis threshold because in their present form the clauses could not tell SMEs whether they would be caught by the Bill. In fact, as in overseas jurisdictions SMEs should all be exempted because, with such small market shares they simply could not engage in activities that would affect the market; and (b) HKGCC also considered the threshold too low and should be substantially raised but it did not have any view on the level at which it should be pitched. It would, however, at Ms Miriam LAU's request, consult its members on whether the de minimis threshold of HK\$500 million was agreeable and report back. 	
033514 – 033930	<p>Chairman Mr LEUNG Kwok-hung</p>	<p>Mr LEUNG Kwok-hung's views –</p> <ul style="list-style-type: none"> (a) if the originally proposed pecuniary penalty cap of 10% of the global turnover of every year of contravention was amended to 10% of the local turnover for each year of infringement, up to a maximum of three years as recently proposed, international consortia would not be prevented from distorting the market in Hong Kong. As such, to protect SMEs, the penalty cap should not be lowered; (b) while the de minimis threshold could be adjusted upwards, it was equally important to clarify what constituted contravention of the second conduct rule; and (c) phased implementation of the conduct rules would encourage enterprises to engage in anti-competitive activities that would not be targeted in the first phase. Moreover, the Bill would not serve any purpose if it could not target supermarket chains and large consortia. 	

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033931-034414	Chairman Administration	<p>The Administration made the following clarifications –</p> <ul style="list-style-type: none"> (a) the Commission might not necessarily bring proceedings before the Competition Tribunal for all cases. Depending on the seriousness and facts of each case, the Commission might issue an infringement notice to the person against whom it proposed to bring proceedings, offering not to bring those proceedings on condition that the person would make a commitment to comply with requirements of the notice in order to address the competition concerns; (b) admission of contravention was not a pre-requisite for the infringement notice and hence follow-on actions might not necessarily arise from accepting the infringement notice. Moreover, with the proposal to remove the payment requirement of a sum not exceeding HK\$ 10 million of the infringement notice, it would be reasonable for the aggrieved third parties to retain the right to follow-on action (if there was admission of contravention) to ensure the deterrent effect of the infringement notice against anti-competitive behaviour; (c) the case where small retailers formed consortia for bulk purchase at a lower price would not constitute hardcore activity such as price-fixing, and if there was any competition concerns the warning notice should be sufficient to address the issue; (d) instead of subjecting merely to an administrative warning issued by the competition authority as HKGCC suggested, enterprises in breach of the second conduct rule equivalent in Canada might be brought before the Canadian Competition Tribunal for determination and remedies under the civil track of enforcement. It should also be noted that the second conduct rule would apply to enterprises with a substantial degree of market power and the abuse of such power by these undertakings might warrant more forceful enforcement measures such as legal proceedings before the Competition Tribunal; and (e) the Administration was not aware of any overseas competition laws which carved out SMEs in entirety, although the de minimis arrangements might be able to exempt some non-serious anti-competitive conduct of SMEs. It should also be noted that Singapore and EU did not provide for any de minimis arrangements for breach of the second conduct rule. 	

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034415 – 035039	Chairman Mr Jeffrey LAM Dr Robert HANSON HKGCC	<p>Mr Jeffrey LAM indicated disagreement with the above points made by the Administration, and stressed the need for clearer criteria for assessing market power.</p> <p>In response to Mr Jeffrey LAM on effect of the Bill, Dr Robert HANSON said that as evidenced by the experience in the United Kingdom, regulation would only strangle small businesses because of the high legal fees incurred.</p> <p>In response to Mr Jeffrey LAM, HKGCC made the following clarifications –</p> <ul style="list-style-type: none"> (a) legal action would not be taken against breach of the second conduct rule in Canada until the court ruled that the act concerned had constituted contravention; and (b) the test of "substantially lessening competition" adopted in Australia, Canada and New Zealand was preferred because it was much clearer, and did not carry any presumption of guilt regardless of whether competition was really harmed as was the European approach. Instead, impacts had to be established by evidence before action would be taken. 	
035040 – 035126	Chairman	Meeting Arrangements	