

立法會
Legislative Council

LC Paper No. CB(1)1654/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/12/09

Bills Committee on Competition Bill

**Minutes of the twenty-sixth meeting held on
Tuesday, 6 December 2011, at 4:30 pm
in Conference Room 3 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-yea, GBS, JP
Hon Emily LAU Wai-hing, 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
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Hak-kan
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Dr Hon LEUNG Ka-lau
Hon WONG Kwok-kin, BBS
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung

Hon WONG Yuk-man

Members absent : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Mrs Regina IP LAU Suk-yea, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Tanya CHAN

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

Mr David Alan GROVER
Senior Government Counsel
Department of Justice

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

Action

I Confirmation of minutes

(LC Paper No. CB(1)516/11-12 — Minutes of meeting held on 11 October 2011)

The minutes of the meeting held on 11 October 2011 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)389/11-12(03) — List of follow-up actions arising from the discussion at the meeting on 8 November 2011

LC Paper No. CB(1)518/11-12(01) — Administration's response to CB(1)389/11-12(03)

LC Paper No. CB(1)518/11-12(02) — List of follow-up actions arising from the discussion at the meeting on 22 November 2011

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)3079/10-11(01) — List of outstanding issues that require action/consideration by the Administration

LC Paper No. CB(1)2618/10-11(01) — Administration's paper on Guidelines on the Second Conduct Rule

LC Paper No. CB(1)2420/10-11(03) — Administration's paper on Guidelines on Market Definition

LC Paper No. CB(1)2336/10-11(01) — Administration's paper on Guidelines on the First Conduct Rule)

LC Paper No. CB(1)518/11-12(03) — Submission from Global Sources dated 1 December 2011)

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

Clause-by-clause examination of the Bill

(LC Paper No. CB(3)885/09-10 — The Bill

LC Paper No. CB(1)320/10-11(04) — Marked-up copy of the Bill prepared by the Legal Service Division

- LC Paper No. CB(1)2283/10-11(04) — Summary of views expressed by deputations on major prohibitions, exclusion and exemption 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 (clauses 6, 9, 11, 21, 24, 26 and 33 and Schedules 1 and 7)
- LC Paper No. CB(1)1034/10-11(05) — Administration's response to CB(1)320/10-11(03) (paragraphs 5-12 and 17-20))

3. The Bills Committee examined sections 11 to 17 of Schedule 7. According to the proposed work plan of the Bills Committee, the Bills Committee should next examine the part of the Bill on exemption for statutory bodies and non-statutory bodies by regulations. Noting that the Administration was still reviewing the activities of a large number of statutory bodies, members went on to examine parts 3 and 8 of the Bill on "complaints and investigations" and "disclosure of information" instead, and completed examination of all relevant clauses.

Follow-up actions required of the Administration

4. The Bills Committee requested the Administration to provide written responses to the following concerns/requests –
- (a) provide a table listing out all penalties that could be imposed under the Bill;
 - (b) in relation to clause 38 on guidelines regarding complaints, ensure that the Competition Commission (the Commission) would in the above guidelines clearly specify the basic information which a complainant had to provide when making complaints to it, so as to facilitate complaint handling;
 - (c) study whether the powers conferred by a warrant under clause 50 were comparable to those in other Hong Kong laws including but not limited to the Copyright Ordinance (Cap. 528) and in laws of overseas jurisdictions;
 - (d) provide a paper on whether other Hong Kong laws provided powers on retention of property similar to those under clause 56;

- (e) in relation to Schedule 1 on general exclusions from conduct rules, provide a paper, with examples, to clarify the meaning of "entrusted by the Government" and the scope of "services of general economic interest" in section 3;

Drafting issues

(f) Part 3 – complaints and investigations

- (i) with reference to overseas practices, consider amending clause 37 to ensure that, if according to clauses 37(2)(a) and 37(2)(b), the Commission refused to investigate a complaint on grounds that the complaint was trivial, frivolous or vexatious, or was misconceived or lacking in substance, the Commission would notify the complainant concerned in writing with reasons;
- (ii) consider amending clause 39(1)(c) to clarify that the Competition Tribunal (the Tribunal) could also refer any alleged contravention of a conduct rule to the Commission for investigation, so as to achieve consistency with clause 117;
- (iii) consider the suggestion of the Law Society of Hong Kong in its submission (LC Paper No. CB(1)1219/10-11(02)) that clause 45(2) should be amended to give a person providing the information/answers concerned the right to adduce and to have such information/answers admitted if that person chose to do so;
- (iv) clause 48 provides that a judge of the Court of First Instance might issue a warrant to enter and search any premises if the judge was satisfied, on application made on oath by an authorized officer, that there were reasonable grounds to suspect that there were or were likely to be, on the premises, documents that might be relevant to an investigation by the Commission. In this respect, the Administration was requested to:
 - review the appropriateness of the threshold of "reasonable grounds to suspect" which some members regarded as being too low a requirement for the issue of search warrants; and
 - provide information on whether similar thresholds were adopted in other Hong Kong laws and if so, the relevant

details;

- (v) some members expressed concern that it might not be appropriate to confer the many powers referred to in clause 50(1) upon just any person whom an authorized officer executing a warrant issued under clause 48 considered necessary to assist the officer in performing the function. With reference to other Hong Kong laws, consider amending clauses 50(2) and 50(3) by:

- specifying the types of persons to whom an authorized officer might call upon to assist the officer in performing the above function, and imposing certain restrictions on the powers thus conferred; or
- only empowering the authorized officer to call upon persons to assist the officer without further conferring the powers concerned on such persons; and

- (vi) amend the following phrases in the Chinese text of the clauses to achieve consistency with similar phrases appearing elsewhere in the Bill:

- (1) amend "複本" in clause 41(2)(a) to "副本" (as in clause 56);
- (2) amend "罔顧後果地" in clause 53(1)(a) to "罔顧實情地" (as in clause 55(2)(b)); and
- (3) amend "法庭" in clause 56(4) to "法院" (as in other clauses in the Bill);

(g) Part 8 – disclosure of information

- (i) introduce Committee Stage amendments to clauses 121 and 123 in consequence of the passage of the Communications Authority Bill at the Council meeting on 30 June 2011; and
- (ii) according to clause 122(2), information provided to the Commission would be regarded as confidential if the provider of the information identified it as confidential and gave a statement in writing setting out the reasons concerned. While noting the need to protect providers of the information, some

members expressed concern that information so provided might be too easily classified as confidential by virtue of clause 122(2), even though the claims of confidentiality were unconvincing. The Administration was requested to consider refining the clause to address such concern; and

(h) Schedule 7

- (i) with reference to overseas practices, consider whether amendments would be introduced to section 12 to ensure that the Commission would make use of the latest technology available (in particular the Internet) to publish the electronic copy of all notices published under section 12(1)(a), according to which the application for a decision as to whether or not a merger was excluded from the application of the merger rule had to be brought to the attention of those the Commission considered likely to be affected by its decision within the period for making representations to the Commission about the application;
- (ii) amend the phrase "任何行動" in the Chinese text of section 14 to more clearly reflect that "any action" in the English text of this section referred to legal action as in the case of clauses 12 and 27 of the Bill; and
- (iii) amend the phrase "作何事情" in the Chinese text of section 15(6) to "任何事情".

5. The Chairman reminded members that the next meeting of the Bills Committee would be held on 20 December 2011 at 4:30 pm.

III Any other business

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

**Proceedings of the twenty-sixth meeting of
the Bills Committee on Competition Bill
on Tuesday, 6 December 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			
000458 – 000534	Chairman	Confirmation of minutes of meeting on 11 October 2011 (LC Paper No. CB(1)516/11-12)	
Agenda Item II – Meeting with the Administration			
000535 – 001011	Chairman Administration	Briefing by the Administration on its response to the list of follow-up actions arising from the discussion at the meeting on 8 November 2011 (LC Paper No. CB(1)518/11-12(01))	
<i>Discussion on the Administration's response to the list of follow-up actions arising from the discussion at the meeting on 8 November 2011 (LC Paper No. CB(1)518/11-12(01))</i>			
001012 – 002058	Chairman Mr Jeffrey LAM Administration	<p>Mr Jeffrey LAM –</p> <p>(a) enquired about the factors that would be considered when deciding whether a joint purchasing or selling agreement between small undertakings would constitute contravention of the first conduct rule; and</p> <p>(b) called upon the Administration to consider the proposal in the Hong Kong General Chamber of Commerce (HKGCC)'s submission dated 6 December 2011 to adopt the test of "effect or likely effect of substantially lessening competition" for both conduct rules and the merger rule, instead of the currently proposed test of whether the conduct would have the object or effect of "preventing, restricting or distorting competition in Hong Kong". If the Administration would not adopt HKGCC's proposed test above, it should explain why the test concerned had changed to the currently proposed test from the test of "substantially lessening competition" originally proposed in the public consultation paper on the Bill in 2008.</p> <p>The Administration's responses –</p> <p>(a) the de minimis arrangements for exclusion from the first conduct rule would not apply to four specified types of serious anti-competitive conduct which would invariably affect competition appreciably irrespective of the size of the undertakings concerned. That said, such conduct was not per se contravention of the law as the competition authorities must still</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>prove that the conduct concerned had the object or effect of preventing, restricting or distorting competition in Hong Kong; and</p> <p>(b) the 2008 consultation paper had used the expression "substantially lessening competition" because this would be one of the considerations for overseas competition authorities to determine whether certain conduct had an appreciable adverse impact on competition, thus contravening the competition law. This was also the test currently adopted for merger control under the Telecommunications Ordinance.</p> <p>Mr LAM emphasized that to enlist the commercial sector's support of the Bill, there was a need to properly address concerns about the uncertainties that would arise from the approach described in (a) above. As such, the Administration should proactively clarify the uncertainties before passage of the Bill, instead of deferring to the future Competition Commission (the Commission) to clarify the uncertainties in the regulatory guidelines during the transitional period.</p> <p>The Administration responded that the recently proposed amendments to the Bill could address the major concerns over uncertainties and inadvertent breach of the law, in particular the proposed de minimis arrangements which excluded all agreements involving no serious anti-competitive conduct between undertakings with a combined turnover not exceeding HK\$ 100 million in the preceding financial/calendar year from the application of the first conduct rule, and the proposed warning notice to help undertakings rectify their malpractices within a reasonable period of time before taking out enforcement action against them.</p> <p>In response to the Chairman and Mr LAM, the Administration undertook to respond to members' views and concerns about the second conduct rule as soon as practicable, and provide a response to HKGCC's submission above respectively.</p>	
002059 – 002300	Chairman Assistant Legal Adviser (ALA2)	ALA2 considered the example given in Appendix B to LC Paper No. CB(1)518/11-12(01) on section 3 of Schedule 1 inadequate, and asked the Administration to provide a paper, with more examples, to clarify the meaning of "entrusted by the Government", and the scope of "services of general economic interest" in section 3.	The Administration to provide information as requested in paragraph 4(e)
Clause-by-clause examination of the Bill			
002301– 002929	Chairman Administration ALA2	<p><u>Examination of sections 11 to 16 of Schedule 7</u></p> <p>In response to ALA2, the Administration agreed to amend the phrase "任何行動" in the Chinese text of section 14 to more clearly reflect that "any action" in the English text of</p>	The Administration to take action as

Time marker	Speaker	Subject(s)	Action required
		<p>this section referred to legal action as in the case of clauses 12 and 27 of the Bill.</p> <p>The Administration also undertook to amend the phrase "作何事情" in the Chinese text of section 15(6) to "任何事情".</p>	<p>requested in paragraph 4(h)(ii)</p> <p>The Administration to take action as requested in paragraph 4(h)(iii)</p>
002930 – 003421	Chairman Mr WONG Ting-kwong Administration	<p>Mr WONG Ting-kwong expressed concern about how the Commission could, in a timely manner, publish notices to bring the application for a decision as to whether or not a merger was excluded from the application of the merger rule to the attention of all parties likely to be affected by its decision within the period for making representations to the Commission about the application (section 12 of Schedule 7).</p> <p>The Administration responded that according to section 12(1)(a), the Commission was required to publish the above notices in any manner it considered appropriate. Notwithstanding, the Commission would ensure that all relevant stakeholders would be properly alerted by, for example, referring the matter to the trades or sectors involved in the merger concerned.</p> <p>Mr WONG considered section 12(1)(a) inadequate for ensuring all relevant parties would be alerted to the above decision applications in a timely manner to enable them to make representations about the applications to the Commission before the relevant deadlines.</p> <p>The Administration explained that the section was related to merger regulation applicable to telecommunications carrier licensees only. Notwithstanding, it agreed to make reference to overseas practices and consider whether amendments would be introduced to section 12 to ensure that the Commission would make use of the latest technology available (in particular the Internet) to publish the electronic copy of all notices published under section 12(1)(a).</p>	<p>The Administration to provide information as requested in paragraph 4(h)(i)</p>
003422 – 003656	Chairman Mr Jeffrey LAM Administration	<p>Mr Jeffrey LAM enquired about the actions that could be taken against decisions made by the Commission, which might include conditions or limitations subject to which they were to have effect.</p> <p>The Administration explained that apart from judicial review, application might also be made to the Competition Tribunal (the Tribunal) for review of the decisions because, according to clause 81(c), a decision regarding specific conduct, made by the Commission under clause 26, was a reviewable determination before the Tribunal.</p> <p>Mr LAM expressed concern that the above arrangements</p>	

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		<p>might not help prevent disputes from arising from the Commission's decisions. He stressed the need for early provision of the criteria against which the Commission would make decisions.</p> <p>The Administration explained that the Commission would publish the relevant regulatory guidelines concerning the competition rules as well as applications for decisions on exclusions during the transitional period. As section 13 of Schedule 7 was related to merger regulation applicable to telecommunications carrier licensees, the Commission would draw up the guidelines in consultation with the Office of the Telecommunications Authority. There were similar guidelines on competition rules under the Telecommunications Ordinance (TO) (Cap. 106) for reference.</p>	
003657 – 004615	Chairman Administration ALA2	<p>ALA2 asked the Administration to explain the difference between the arrangements regarding the rescission of decisions on exclusion from the merger rule as set out in section 15(2) of Schedule 7, and those regarding the rescission of decisions on exclusion from the first and second conduct rules as set out in clauses 12 and 27, namely, that under clauses 12 and 27 the relevant exclusion decision would be rescinded immediately upon non-compliance with the conditions and limitations subject to which the decision was to have effect, whereas under section 15(2) of Schedule 7, certain procedures would be followed first</p> <p>The Administration explained that different arrangements for rescinding a decision on exclusion from the merger rule were necessary in recognition of the significant institutional changes, substantial costs and financial stakes involved in the merger proposals, which might result in irreversible consequences and wide implications such as fluctuations in share prices. There was hence the need to give the undertakings concerned the opportunities to make representations on the justifications for non-compliance before the Commission rescinded the decision on exclusion.</p> <p>The Administration further reported that it would amend section 16 of Schedule 7 to ensure that the Commission would make use of the latest technology available (in particular the Internet) to publish the electronic copy of all decisions made in respect of applications made under section 11 of Schedule 7, and of all notices of rescissions of such decisions.</p>	
004616 – 004920	Chairman Ms Miriam LAU Administration	<p><u>Examination of section 17 of Schedule 7</u></p> <p>In response to Ms Miriam LAU on the need to allow Legislative Council (LegCo) Members the opportunity to comment on the regulatory guidelines, the Administration</p>	

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		<p>explained that –</p> <ul style="list-style-type: none"> (a) the guidelines under section 17 of Schedule 7 and clause 35 of the Bill would be formulated by the Commission after consultation with the relevant stakeholders including LegCo, and the competition rules would be brought into operation only after the guidelines were ready and the society was prepared for the new law; (b) Committee Stage amendments would be introduced to provide that the Commission would consult LegCo when formulating the guidelines; and (c) according to clause 1, the Administration would appoint the days on which different parts of the Bill would come into operation by notice published in the Gazette subject to negative vetting by LegCo. LegCo Members could then assess the readiness of implementing the law having regard to the final version of the guidelines prepared by the Commission after consultation. 	
004921 – 005142	Chairman Administration Ms Emily LAU	<p>According to the proposed work plan of the Bills Committee, the Bills Committee should next examine the part of the Bill on exemption for statutory bodies and non-statutory bodies by regulations. Noting that the Administration was reviewing the activities of a large number of statutory bodies, members agreed to examine the parts of the Bill on "complaints and investigations" and "disclosure of information" first.</p> <p>In response to Ms Emily LAU, the Administration undertook to provide the list of exempted bodies as soon as practicable.</p>	
005143 – 010451	Chairman Administration Mr Jeffrey LAM Ms Emily LAU Ms Miriam LAU Mr Ronny TONG	<p><u>Examination of clause 37 – complaints</u></p> <p><u>What complaints to handle</u></p> <p>In response to the Chairman on the mechanism for deciding whether a complaint was trivial, frivolous or vexatious according to clauses 37(2)(a) and 37(2)(b), the Administration explained that the Commission had to make the decision based on the facts of each case. It was also noted that the expression "trivial, frivolous or vexatious" was commonly used in other laws.</p> <p>In response to Mr Jeffrey LAM on the feasibility and appropriateness of handling anonymous complaints, the Administration explained that the Commission could act upon receipt of anonymous complaints if they provided sufficient information for initiating investigation, or if there were reasonable grounds to suspect that a contravention had taken or was about to take place. In</p>	

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		<p>fact, the Commission could act on its own volition or respond to press reports if there was reasonable cause to suspect that a contravention had taken place or was about to take place.</p> <p>In response to Mr LAM's concern about the above likelihood of the Commission conducting investigations in response to press reports, the Administration reiterated the need for the Commission to gather more information to establish a reasonable cause to suspect beforehand.</p> <p><u>The need to notify the complainant concerned on refusal to investigate</u></p> <p>Ms Emily LAU opined that to enable complainants to make appeals if necessary, there was a need to notify them in writing with reasons if the Commission refused to investigate a complaint on grounds that the complaint was trivial, frivolous or vexatious, or was misconceived or lacking in substance.</p> <p>The Administration said that whilst there was no such notification requirement under the Bill, the Administration could relay members' view to the Commission for consideration when it worked out the complaint-handling procedures.</p> <p>Ms Miriam LAU considered it necessary for the above notification requirement to be written into the Bill. The Administration responded that the Commission would act reasonably and should, as a matter of principle, keep the complainants informed of the progress of the investigation as far as practicable. The work of the Commission would also be subject to oversight by the Ombudsman. Aggrieved parties might also seek judicial review if appropriate.</p> <p>At Ms Miriam LAU's and Mr Ronny TONG's request, the Administration agreed to make reference to overseas practices and consider whether clause 37 should be amended to impose the above proposed notification requirement.</p>	<p>The Administration to provide information as requested in paragraph 4(f)(i)</p>
010452 – 011044	Chairman Administration ALA2 Ms Emily LAU	<p><u>Examination of clause 38 – Guidelines regarding complaints</u></p> <p>The Chairman considered it undesirable to issue guidelines indicating the manner and form in which complaints were to be made, lest complaints not made in the specified format would not be handled.</p> <p>The Administration explained that the guidelines were not meant to be mandatory requirements for compliance, but were aimed at indicating, for the complainants' reference, the types and details of information that the Commission</p>	<p>The Administration to provide information as</p>

Time marker	Speaker	Subject(s)	Action required
		<p>could base on in considering whether an investigation should be initiated on receipt of a complaint.</p> <p>Ms Emily LAU opined that the above guidelines could facilitate complaint-handling if the Administration could ensure that the Commission would in the guidelines clearly specify the basic information which a complainant had to provide when making complaints to it.</p>	<p>requested in paragraph 4(b)</p>
<p>011045 – 012359</p>	<p>Chairman Administration Ms Miriam LAU ALA2 Mr Ronny TONG</p>	<p><u>Examination of clauses 39 to 41</u></p> <p><u>Concerns about the transparency of the Commission's operation</u></p> <p>Ms Miriam LAU asked whether the Commission would follow the Ombudsman's practice in making known its intention and reasons of initiating an investigation of its own volition into any alleged contravention of a competition rule (clause 39).</p> <p>The Administration explained that –</p> <p>(a) according to clause 40, the Commission would issue guidelines on the procedures it would follow in deciding whether or not to conduct an investigation, including those initiated of its own volition. In any event, the Commission would need to gather information from the relevant parties for the purpose of conducting an investigation and the parties concerned would be alerted to such an investigation;</p> <p>(b) the Commission would need to strike a balance between transparency of its work and the need to safeguard confidentiality of an investigation, having regard to the interests of the undertakings under investigation and the risks of subjecting the evidence to destruction or interference; and</p> <p>(c) the work of the Commission and the Ombudsman might not be directly comparable, as the latter handled administrative complaints relating to Government departments or public bodies which would be obliged to provide the information on request, whereas the Commission would need more enforcement powers such as entry of premises for search on warrant to ensure effective investigation into suspected anti-competitive conduct of undertakings in all sectors.</p> <p><u>Other concerns</u></p> <p>In response to ALA2, the Administration agreed to consider amending clause 39(1)(c) to clarify that the Tribunal could also refer any alleged contravention of a conduct rule to the Commission for investigation, so as to</p>	<p>The Administration to take action as requested in paragraph 4(f)(ii)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>achieve consistency with clause 117.</p> <p>Ms Miriam LAU questioned the enforceability of clause 41(5)(b), which required the person concerned to state, to the best of the person's knowledge and belief, where a document requested was if it was not produced.</p> <p>The Administration explained that the clause was required to empower the Commission to ask the person whether he knew the whereabouts of the document concerned to facilitate evidence collection. The Administration and Mr Ronny TONG further pointed out that clause 52, according to which penalties could be imposed for failure to comply with a requirement under clause 41, could help enforce clause 41(5)(b), especially if the person concerned made a statutory declaration regarding evidence under clause 43.</p>	
012400 – 012630	Chairman Administration	<p><u>Examination of clauses 42 and 43</u></p> <p>In response to the Chairman, the Administration explained that the Commission might not necessarily require a person giving any evidence to it to verify its truth by statutory declaration, which would only be made on a need basis. (clause 43)</p>	
<i>Break from 012631 to 013631</i>			
013632 – 014005	Chairman Administration	<p><u>Examination of clauses 44 to 46</u></p> <p>In response to the Chairman, the Administration agreed to respond in writing on whether the Administration would consider the suggestion of the Law Society of Hong Kong in its submission (LC Paper No. CB(1)1219/10-11(02)) that clause 45(2) should be amended to give a person providing the information/answers concerned the right to adduce and have such information/answers admitted if that person chose to do so.</p>	The Administration to provide information as requested in paragraph 4(f)(iii)
014006 – 014705	Chairman Administration Ms Miriam LAU	<p><u>Examination of clauses 47 and 48</u></p> <p>Clause 48 provided that a judge of the Court of First Instance might issue a warrant to enter and search any premises if the judge was satisfied, on application made on oath by an authorized officer, that there were reasonable grounds to suspect that there were or were likely to be, on the premises, documents that might be relevant to an investigation by the Commission. Ms Miriam LAU expressed concern that the above threshold of "reasonable grounds to suspect" was too low, and opined that a higher threshold of "reasonable grounds to believe" should be adopted instead considering that the warrant was for entering and searching premises to seize evidence, and hence greater care should be exercised for its issue.</p> <p>The Administration explained that –</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(a) in recognition that the investigation conducted by the Commission might involve confidential or commercially sensitive information, the Bill had proposed a higher threshold for the issue of warrant by requiring the application concerned to be filed with a judge of the Court of First Instance instead of to a magistrate as in the case of the Securities and Futures Ordinance (Cap. 571), which also adopted the threshold of "reasonable grounds to suspect" for application of warrant;</p> <p>(b) in granting the warrant, the judge of the Court of First Instance would have the power to impose conditions on the search to be conducted, e.g. timing, scope, the powers that could be exercised during the search, etc.; and</p> <p>(c) the threshold of "reasonable grounds to believe", being a higher standard than "reasonable grounds to suspect", would make investigation more difficult.</p> <p>The Chairman opined that the Bill should not be compared to Cap. 571 which dealt with more serious offences. Sharing Ms LAU's concern, he requested the Administration to review the appropriateness of the present threshold, and to study and provide information on whether similar thresholds were adopted in other Hong Kong laws and if so, the relevant details and examples, and whether Ms LAU's proposed threshold could be adopted instead.</p>	<p>The Administration to provide information as requested in paragraph 4(f)(iv)</p>
<p>014706 – 015846</p>	<p>Chairman Administration Ms Miriam LAU ALA2 Ms Emily LAU</p>	<p><u>Examination of clauses 49 and 50</u></p> <p>In response to Ms Miriam LAU and the Chairman, the Administration explained that the powers conferred by a warrant under clause 50 were similar to those in the competition laws of other jurisdictions, such as Singapore and the UK, and in Cap. 571. At the Chairman's request, the Administration agreed to study whether these powers were comparable to those in other Hong Kong laws including but not limited to the Copyright Ordinance (Cap. 528) and in laws of overseas jurisdictions.</p> <p>Noting that according to clause 50(1), many powers were conferred by the warrant, in particular the use of force to remove any person or thing obstructing the execution of the warrant, Ms Miriam LAU expressed concern that it might not be appropriate to, as set out in clauses 50(2) and 50(3), confer these powers upon just any person whom an authorized officer executing a warrant considered necessary to assist the officer in performing the function, lest there might be abuse.</p> <p>The Administration explained that –</p>	<p>The Administration to provide information as requested in paragraph 4(c)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>(a) the authorized officer might need to call upon such other persons as the officer considered necessary to assist in executing the warrant, for example the assistance of the Fire Services Department in gaining entry to premises, the Police in keeping order, or specialists or labour to take away seized evidence (whether in printed or electronic forms). Hence the drafting of clauses 50(2) and 50(3) in their present form to provide the necessary flexibility; and</p> <p>(b) both the authorized officer and the persons asked to assist had to exercise the powers within the scope of the warrant.</p> <p>To address Ms Miriam LAU's concern above, the Administration subsequently agreed to, with reference to other Hong Kong laws, consider amending clauses 50(2) and 50(3) by –</p> <p>(a) specifying the types of persons to whom an authorized officer might call upon to assist in performing the above function, and imposing certain restrictions on the powers thus conferred, as ALA2 suggested; or</p> <p>(b) only empowering the authorized officer to call upon persons to assist without further conferring the powers concerned on such persons, as Ms Emily LAU and the Administration suggested.</p>	<p>The Administration to provide information as requested in paragraph 4(f)(v)</p>
015847 – 020550	Chairman Administration ALA2	<p><u>Examination of clauses 51 to 55</u></p> <p>In response to the Chairman, the Administration agreed to provide a table listing out all penalties that could be imposed under the Bill.</p> <p>In response to ALA2, the Administration agreed to amend the phrase "罔顧後果地" in the Chinese text of clause 53(1)(a) to "罔顧實情地" (as in clause 55(2)(b)), so as to achieve consistency with similar phrase(s) appearing elsewhere in the Bill.</p>	<p>The Administration to provide information as requested in paragraph 4(a)</p> <p>The Administration to take action as requested in paragraph 4(f)(vi)(2)</p>
020551 – 021202	Chairman Administration ALA2	<p><u>Examination of clauses 56 to 58</u></p> <p>The Administration advised that the phrase "法庭" in the Chinese text of clause 56(4) would be amended to "法院" (as in other clauses in the Bill), so as to achieve consistency with similar phrase(s) appearing elsewhere in the Bill.</p> <p>The Chairman expressed concern about the powers on</p>	<p>The Administration to take action as requested in paragraph 4(f)(vi)(3)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>retention of property under clause 56 in recognition that such powers were normally exercised only during criminal proceedings, whereas the Bill should essentially provide a civil regime.</p> <p>The Administration explained that providing the proposed arrangements in respect of the retention of property would ensure that the parties concerned would have the opportunity, in a transparent and objective manner, to object to proposed retention. In response to ALA2, the Administration agreed to provide a paper on whether other Hong Kong laws provided powers on retention of their property similar to those under clause 56.</p> <p>In response to ALA2, the Administration also agreed to amend the phrase "複本" in the Chinese text of clause 41(2)(a) to "副本" (as in clause 56), so as to achieve consistency with similar phrase(s) appearing elsewhere in the Bill.</p>	<p>The Administration to provide information as requested in paragraph 4(d)</p> <p>The Administration to take action as requested in paragraph 4(f)(vi)(1)</p>
021203 – 021424	Chairman Administration ALA2	<p><u>Examination of clauses 121 to 125</u></p> <p>In response to ALA2, the Administration agreed to introduce Committee Stage amendments to clauses 121 and 123 arising from the passage of the Communications Authority Bill at the Council meeting on 30 June 2011.</p>	The Administration to take action as requested in paragraph 4(g)(i)
021425 – 023858	Chairman Administration ALA2 Ms Emily LAU	<p><u>Definition of "confidential information"</u></p> <p>The Chairman considered the provision of a more specific definition of "confidential information" necessary.</p> <p>In response, the Administration stressed the need for safeguarding confidentiality of confidential information while ensuring the public's right to know. According to clause 125, information regarded as confidential under clause 122 might still be disclosed under certain circumstances. The two clauses together would strike a balance between protecting confidential information and ensuring effective operation of the Commission.</p> <p>Discussion on whether the detailed definition of "confidential information" should be provided in clause 2 instead of clause 122 to facilitate cross-referencing.</p> <p><u>Miscellaneous views</u></p> <p>In response to the Chairman, the Administration advised that by virtue of clause 122, different penalties could be imposed for contravention of clause 124 concerning preservation of confidentiality by any person, including staff of the Commission.</p>	

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		<p>In response to ALA2, the Administration explained why the phrase "subject to" in clauses 125(1)(a) and 125(1)(b) had been translated into Chinese differently.</p> <p><i>Claims of confidentiality</i></p> <p>ALA2 enquired whether it would be too loose for clause 122(2) to provide that information provided to the Commission would be regarded as confidential if the provider of the information identified it as confidential and gave a statement in writing setting out the reasons concerned. He asked whether there was a mechanism for the Commission to veto such claims as necessary to prevent abuse of the clause.</p> <p>The Administration responded that even if certain information was identified by the party as confidential, the Commission might still disclose such confidential information under certain circumstances as specified in clause 125, e.g. if such information was already made public, or if the information was required for the Commission to perform its function.</p> <p>ALA2 and the Chairman opined that clause 125 could only deal with unreasonable claims. As such, in the absence of a mechanism for the Commission to veto claims of confidentiality, even though the claims were unconvincing, information provided might be too easily classified as confidential by virtue of clause 122(2).</p> <p>The Administration explained that clause 122(2) was necessary to protect providers of information, e.g. whistle blowers seeking leniency, and to come forward and assist in the investigation. In response to the Chairman, the Administration agreed to consider refining the clause to address the above concern.</p>	<p>The Administration to provide information as requested in paragraph 4(g)(ii)</p>
023859 – 024116	Chairman Administration	<u>Examination of clauses 126 and 127</u>	
024117 – 024501	Chairman Administration Ms Emily LAU Mr Ronny TONG	Meeting arrangements	