

Bills Committee on Competition Bill

**Meeting on
Tuesday, 28 February 2012, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

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Good afternoon and thank you for inviting members of the public to be here to share their views on the competition bill.

I have already articulated my views about this bill on previous visits. Our competition problems in Hong Kong are rooted in the land policy and cannot be remedied by this bill. Indeed, by burdening ordinary businesses with compliance concerns and by creating huge transaction costs, this bill will make the situation worse rather than better. The types of people who stand to benefit the most are the lawyers for whom an entirely new revenue source is being created. However, these arguments do not seem to have been taken on board by the administration, since we are still here discussing this entirely counterproductive venture. You have already heard me talk about the many arguments against having a competition law and I will not repeat them today. Instead, as I note that the Commerce and Economic Development Bureau has recently submitted a document titled Exemption Arrangements for Statutory Bodies under the Competition Bill (CB(1)1031/11-12(02)), I will talk about the intellectual incoherence, not to say utter nonsense, which is evidenced in the administration's document.

Let me start with paragraph 5:

5. After reviewing the nature and activities of all statutory bodies falling within the definition in the Bill in consultation with the relevant bureaux and departments and the Judiciary, we propose that - (a) 575 statutory bodies should remain exempted in their entirety (Annex A); and (b) six statutory bodies should not be exempted (Annex B);

After all these efforts to identify statutory bodies which should *not* be exempted, the administration came up with 6 out of 581, or 1 percent, which should not be exempted. To me that sounds like they did not try very hard. But let us, for arguments sake, also look at the reasons they cite for not exempting 575 of the 581 statutory bodies.

In paragraph 6 (a) it is stated that:

6. (a) 415 of them do not engage in economic activities or have insignificant amount of economic activities.

Now you will recall that on previous occasions the administration has spent a lot of time trying to convince you that the law has all these safeguards, such as the *de minimis* rule, ensuring that small scale economic activities, such as those involving SMEs, will not be caught by the competition law. Thus you now have to ask yourselves, if that is true, why would the administration seek to exempt 415 statutory bodies which “*do not engage in economic activities or have insignificant amount of economic activities*”? This makes absolutely no sense. And if it makes no sense, can you trust the assurances given by the administration regarding SMEs?

Let me move on to paragraph 6 (b):

6. (b) 160 statutory bodies engage in economic activities that are directly related to the provision of essential public services or the implementation of Government policy in such areas as education, healthcare, social welfare, public housing and trade promotion.

In the case of the 415 exempted bodies, the argument was that they are not economically active. That argument cannot be used with respect to the 160 bodies, because they are economically active. Thus, the argument now seems to be that these bodies should be exempted because they provide “*essential public services or the implementation of Government policy*”. We find examples such as: Hong Kong Playground Association, Hong Kong Productivity Council, Hong Kong Trade Development Council, Hong Kong Association of Banks, Hong Kong Institute of Architects and something called the Vegetable Marketing Organisation. Is the administration seriously trying to say that these organisations are providing “*essential public services or the implementation of Government policy*”. The Vegetable Marketing Organisation? That is farcical. Or try going to the Hong Kong Institute of Architects’ website and click on the button called “Vision & Mission”. It will take you to an empty page – no vision, no mission. Most of these organisations are white elephants, relics from the past, parasites which live off the public purse. Not only should they not be exempted, they should be shut down.

Lastly, let me highlight paragraphs 8 and 9. Due to time constraints I will not read them out here. In a nutshell, the administration states that we need not worry about all these exemptions since the administration will keep an eye on whether they engage in any anti-competitive conduct and, if they do, the administration will kindly request them to change their conduct. So what the administration is actually doing is admitting that these statutory bodies are capable of anti-competitive conduct, which leads me to ask why they should be exempted in the first place? It appears that some organisations are more equal than others.

The administration’s document is threadbare and evidences the sort of desperation one would expect of people who have run out of arguments. I urge this Council to reject these arguments and to reject this bill.

Thank you.

Hans Fook