

**For discussion  
on 19 March 2012**

## **Bills Committee on Competition Bill**

### **Responses to follow-up questions arising from previous meetings**

#### **Purpose**

This paper responds to questions raised by Members and views expressed by deputations at the meetings of 14 and 28 February 2012.

#### **A. Exemption arrangement for statutory bodies**

##### *Rationale of exemption arrangement for statutory bodies*

2. The majority of statutory bodies in Hong Kong does not engage in economic activities or is engaged in economic activities which have insignificant effect on the market. For most other statutory bodies engaging in economic activities, the economic activities concerned are directly related to the provision of an essential public service or the implementation of public policy. Overseas case law suggests that entities with no economic activities and economic activities of the abovementioned categories are usually excluded from the application of the competition law. The proposed exemption arrangement for statutory bodies is to ensure that efficient implementation of public policies as well as measures which are required to respond swiftly to the needs of the community would not be affected by the introduction of the competition law in Hong Kong.

3. We note the concerns of some deputations that the proposed exemption arrangement might create an uneven playing field between the exempted statutory bodies and the private sector. In this regard, it should be stressed that exemption are not exclusively provided for statutory bodies only. The Competition Bill (“the Bill”) also provides for the exemption of non-statutory bodies, including private undertakings. For example, schedule 1 of the Bill provides a number of circumstances (such as agreements enhancing overall economic efficiency and services of general economic interest) under which the conduct rules do not apply. Clauses 31 and 32 of the Bill also empower the Chief Executive in Council to make orders to exempt agreements or conduct if there are exceptional and compelling reasons of public policy to do so, or if exemptions are required to avoid a conflict with international obligations respectively.

##### *Monitoring of exempted statutory bodies*

4. There were also concerns about how the activities of exempted statutory bodies would be monitored in the absence of a statutory regulatory regime. While not

being subject to the competition rules in the Bill, exempted statutory bodies are still required to adhere to the competition principles underpinning the rules. The Administration will ensure that exempted statutory bodies would not undertake anti-competitive activities unless there are justifiable causes. The Competition Policy Advisory Group (COMPAG) will receive and investigate complaints against anti-competitive behavior of exempted statutory bodies. While the COMPAG has no power to investigate or rectify behavior in cases involving private sector undertakings, and hence the need for a statutory regulatory regime, it would be able to handle complaints on statutory bodies with the assistance of the relevant Bureau and Department. Exempted statutory bodies found to have breached the competition rules would be requested to rectify their anti-competitive behavior. As a final resort, the Bill also provides the Administration with the power under clause 5(1)(a) to apply the competition rules and the enforcement provisions to a statutory body subject to the fulfillment of the criteria in clause 5(2).

5. Moreover, it should be noted that the exempted statutory bodies are still required to offer assistance in investigations conducted by the Competition Commission under Part 3 of the Bill, proceedings or appeals before the Tribunal under Parts 5, 7 and 10 of the Bill, and to comply with the relevant rules on the use of confidential information under Part 8 of the Bill. In addition, the functions of statutory bodies as well as the services or activities that might be engaged by them are usually regulated by the ordinances by or under which the statutory bodies are established or constituted. It is a statutory duty for statutory bodies to operate in accordance with the requirements in the establishing ordinances.

## **B. Role of the Hong Kong Trade and Development Council (“TDC”) and its exemption**

6. The TDC was established under the Hong Kong Trade Development Council Ordinance (Cap. 1114). The core statutory functions of the TDC are to promote, assist and develop Hong Kong’s trade with places outside Hong Kong, with particular reference to exports; and to make such recommendations to the Government as it sees fit in relation to any measures which it considers conducive to achieving increase in Hong Kong’s trade.

7. The TDC fulfills its statutory duties by, inter alia, promoting Hong Kong’s merchandise and service industries through international trade promotion events, trade fairs in Hong Kong and product/service publications; providing business-matching and databank services to connect Hong Kong companies, in particular small and medium enterprises (“SMEs”), with potential partners; making available business and market information to SMEs; enhancing the capability of Hong Kong industries through training and brand-name promotion activities; and showcasing innovative Hong Kong products through Design Gallery shops. Among the activities of the TDC, trade fairs have played a pivotal role in enabling the TDC to discharge its duties of export trade promotion. The TDC’s trade fairs have greatly assisted SMEs in expanding their businesses in overseas markets, and more importantly, consolidated Hong Kong’s role as an international trade fair capital in the region. Many SMEs rely on the TDC’s

trade fairs as an affordable and efficient means as well as a reliable channel for promoting their products and services to overseas buyers. In fact, the TDC's trade fairs have all been organised in response to the demands of the local industries or with a view to promoting Government policies. A list of trade fairs organised by the TDC in 2010-11 is at **Annex A**. In terms of market share, while the TDC is one of the major fair / exhibition organisers in Hong Kong, it does not maintain a monopoly in the market. For example, amongst all trade fairs organised in Hong Kong Convention and Exhibition Centre and Asia-World Expo during 2009 to 2011, the TDC organised only some 26.69% of these trade fairs, followed by the second largest organiser (in terms of number of trade fairs organised) which has a share of 19.61%. A table showing the number of trade fairs organised by different organisers is at **Annex B**.

8. In making the decision to exempt the TDC, the Administration has taken into account the fact that the operation of the TDC differs from other private operators in the exhibition market. Unlike private exhibition organisers which operate for the purpose of maximising their profits and might reduce their scale of operation during economic downturn, the TDC is tasked to promote Hong Kong external trade regardless of the economic conditions. In times of economic hardship, the Government will request the TDC to do more in terms of trade promotion including the organisation of trade fairs, in order to provide the necessary support to SMEs and maintain Hong Kong's overall competitiveness. It is worth noting that not all the trade fairs organised by the TDC are in fact profitable but the TDC has nevertheless continued to organise these trade fairs for the greater benefit of local industries and SMEs and in order to support the Government's policies. Examples of these trade fairs are the "Hong Kong International Wine & Spirit Fair", the "World Boutique, Hong Kong", and the "Entrepreneur Day".

9. The exemption for the TDC from the application of the Bill will help eliminate any uncertainties as to whether certain activities (such as organising loss making trade fairs), which form part of the TDC's core statutory functions, might be alleged as anti-competitive, and thus ensure its uninterrupted support to local industries and SMEs. As with the other exempted statutory bodies, the TDC would be requested to adhere to the competition principles despite the exemption, and to rectify any of its anti-competitive behavior in case it is found in breach of the principles concerned. In addition, the TDC has been exercising and will continue to exercise prudence in developing new trade fairs. It would only initiate a new fair in response to demands from the industry, and upon conducting feasibility study and confirming that there are no similar fairs / other promotion channels in the market to meet the industry's demand.

### **C. Cooperation between TDC and Global Sources**

10. Since 2010, the TDC has been co-operating with Global Sources in providing free shuttle services between the Hong Kong Convention and Exhibition Centre and AsiaWorld-Expo to facilitate buyers travelling between the two venues during the mega fairs in April and October. So far, over 11,000 visitors have benefitted from this service. Moreover, after consultation with the relevant industry, the TDC will mount a TDC pavilion in the upcoming Global Sources' China Sourcing Fair in Dubai in May

2012. The TDC will continue to work with other fair / exhibition organisers in the market, including Global Sources and explore the feasibility of other possible modes of co-operation.

11. As regards the claims made in submission from the Hong Kong Small and Medium Enterprises Association, we have conveyed the views to the TDC, which has provided a separate response to the Bills Committee.

#### **D. Others**

12. On Members' suggestion that the Administration should consider undertaking at the resumption of Second Reading debate on the Bill to review the enacted Bill, we are considering the suggestion and will respond in due course.

#### **Advice sought**

13. Members are invited to note the contents of the paper.

**Commerce and Economic Development Bureau**  
**March 2012**

**Trade Fairs organised by the TDC in 2010-11**

	<b>Name of Trade Fairs</b>
1.	Eco Expo Asia – International Trade Fair on Environmental Protection
2.	Education & Careers Expo
3.	electronicAsia
4.	Entrepreneur Day
5.	Food Expo
6.	Hong Kong Baby Products Fair
7.	Hong Kong Book Fair
8.	Hong Kong Electronics Fair (Autumn Edition)
9.	Hong Kong Electronics Fair (Spring Edition)
10.	Hong Kong Fashion Week for Fall/Winter
11.	Hong Kong Fashion Week for Spring/Summer
12.	Hong Kong Gifts & Premium Fair
13.	Hong Kong Houseware Fair
14.	Hong Kong International Building & Decoration Material & Hardware Fair
15.	Hong Kong International Film & TV Market (FILMART)
16.	Hong Kong International Home Textiles Fair
17.	Hong Kong International ICT Expo
18.	Hong Kong International Jewellery Show
19.	Hong Kong International Licensing Show
20.	Hong Kong International Lighting Fair (Autumn Edition)
21.	Hong Kong International Lighting Fair (Spring Edition)
22.	Hong Kong International Medical Devices & Supplies Fair
23.	Hong Kong International Printing & Packaging Fair
24.	Hong Kong International Stationery Fair
25.	Hong Kong International Wine & Spirits Fair
26.	Hong Kong Optical Fair
27.	Hong Kong Toys & Games Fair
28.	Hong Kong Watch & Clock Fair
29.	Inno Design Tech Expo
30.	International Conference & Exhibition of the Modernization of Chinese Medicine & Health Products (ICMCM)
31.	International Tea Fair
32.	Sport Source Asia
33.	Summer Sourcing Show for Gifts, Houseware & Toys
34.	World Boutique, Hong Kong
35.	World SME Expo

**Estimated market share of major exhibition organisers in Hong Kong  
(based on the number of trade fairs organised during 2009 – 2011)**

	<b>2009 - 2011</b>		
	<i>Exhibition organiser (in descending order of no. of fairs organised)</i>	No. of trade fairs organised	% of the no. of trade fairs organised by the exhibition organiser concerned to the total no. of trade fairs organised
1	TDC	83	26.69%
2	Global Sources	61	19.61%
3	UBM Asia Limited	18	5.79%
4	TDC & Other Exhibition Co-organisers	11	3.54%
5	APLF Limited	9	2.89%
6	Group Idea International Limited	8	2.57%
7	Paper Communication Exhibition Services	7	2.25%
8	Reed Exhibitions	7	2.25%
9	Others	107	34.41%
	<b>Total:</b>	<b>311</b>	<b>100.00%</b>