

Bills Committee on Competition Bill

List of follow-up actions arising from the discussion at the meeting on 10 April 2012

At the meeting on 10 April 2012, the Administration was requested to take the following actions –

- (1) provide a written response to the submission dated 5 April 2012 from the Hong Kong General Chamber of Commerce on the Bill [LC Paper No. CB(1)1519/11-12(02) issued on 10 April 2012];

Market power threshold

- (2) the Secretary for Commerce and Economic Development to explain in his concluding speech for resumption of the second reading debate on the Bill that in determining whether an undertaking had a "substantial degree of market power", regard would be given to the specific conditions of individual trades instead of rigidly applying the presently proposed "minimum" market share threshold of 25%;
- (3) respond to the proposal to adjust the presently proposed "minimum" market share threshold of 25% in the light of the following different views of members:
 - (i) that the proposed threshold was too low to address the concerns of small and medium enterprises (SMEs), and should preferably be adjusted to 30% or 35%;
 - (ii) that the proposed threshold was low if compared with those of overseas jurisdictions and was even lower than the 30% threshold proposed by the Consumer Council; and
 - (iii) that the effectiveness of the Bill would be seriously affected if further concessions were made;

Threshold for the de minimis arrangements

- (4) provide a table on the respective thresholds proposed by different parties (including various trade associations) for exclusion from the application of the second conduct rule under the proposed de

minimis arrangements, so as to enable members to ascertain how far the Administration's latest proposal to increase the turnover threshold for conduct of lesser significance under the second conduct rule (from the originally proposed HK\$11 million to HK\$ 40 million) could respond to their requests, and whether certain majority request(s) need to be followed up;

Clause 106

- (5) to clearly explain how the arrangements for transfer of proceedings under the Bill would operate in order to address Ms Audrey EU's concern that as a result of the arrangements provided under clause 106, one set of facts might give rise to more than one set of proceedings, resulting in parallel proceedings; and

The new clause 153B

- (6) with reference to the following views expressed at the meeting, review the need for adding the proposed new clause 153B to bar judicial review of the decisions of the Tribunal:
 - (i) it was unacceptable to rigidly prohibit judicial review of the Tribunal's decisions since the right to apply for judicial review was an essential civil right;
 - (ii) judicial review should essentially be used to handle decisions made by courts lower than the Court of First Instance (CFI) in the judicial hierarchy. If the Tribunal would be established as a superior court of record, on a par with CFI, judicial review would in principle not apply to the Tribunal's decisions; and
 - (iii) even without the clause 153B, the Judiciary could still decide on its own whether to grant approval to applications for judicial review. If clause 153B had been proposed by the Judiciary, consideration should be given to the need to uphold the important principle of separation of powers.