

**For discussion
On 8 May 2012**

Bills Committee on Competition Bill

Proposed Committee Stage Amendments

Purpose

This paper sets out the finalised version of the Committee Stage Amendments (CSAs) to Part 7 and related clauses and clauses concerning the leave requirement for appeal as well as other further CSAs to be proposed by the Administration to the Competition Bill (the Bill).

CSAs Previously Discussed at the Bills Committee Meeting

2. We have presented the Administration's proposed CSAs to the Bill (except Part 7 and clauses concerning the leave requirement for appeal) in our paper "Proposed Committee Stage Amendments" (see LC Paper No. CB(1)1573/11-12(03)), which was discussed at the Bills Committee meeting on 17 April 2012.

3. For the proposed CSAs to Part 7 and related clauses (clauses 141 and 149) as well as clause 153 concerning the leave requirement for appeal, we have presented them to the Bills Committee at its meeting on 2 April 2012 (see LC Paper No. CB(1)1450/11-12(03)). Subsequent to discussions with Members, further amendments have also been proposed to clauses 106, 118, 153 and 153B in response to suggestions and comments made.

Further CSA Proposals

4. In addition to the abovementioned CSAs, we now propose to introduce the following further CSAs to clauses 6, 21, section 28(B)(7) of Schedule 5, section 5 of Schedule 8 as well as a number of CSAs which are textual in nature. Details of our proposals are set out in the ensuing paragraphs.

Clause 6, Clause 21 and Section 28(B)(7) of Schedule 5

5. In response to Members' suggestions, amendments to clause 21 (setting out relevant factors that may be taken into account in determining whether an undertaking has a substantial degree of market power) and section 28(B)(7) of Schedule 5 (a textual amendment) have been proposed and agreed at the Bills Committee meeting on 24 April 2012 (see LC Paper No. CB(1)1652/11-12(02)).

6. We have also proposed to delete clause 6(2) in response to Members' suggestion. Details are set out in the Administration's responses to questions raised by Members submitted to the Bills Committee for discussion on 8 May 2012.

Section 5 of Schedule 8

7. Under clause 154, the registrar, senior deputy registrar and deputy registrar of the High Court would, by virtue of their appointments for the High Court, also hold offices of registrar, senior deputy registrar and deputy registrar of the Competition Tribunal (CT). The registrar, senior deputy registrar and deputy registrar of the High Court are currently listed as "judicial offices" in Schedule 1 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92).

8. We note that the Bill does not provide for the listing of registrar, senior deputy registrar and deputy registrar of the CT in Schedule 1 of Cap. 92. Since registrar, senior deputy registrar and deputy registrar of the CT are separate and discrete judicial offices distinct from those of the High Court, we propose that an amendment should be made to section 5 of Schedule 8 of the Bill so that registrar, senior deputy registrar and deputy registrar of the CT would be added to Schedule 1 of Cap.92.

Other Textual and Technical Amendments

9. For the purpose of enhancing the clarity of the Bill, we propose a number of further textual or technical amendments. Details of these amendments are set out below. They are summarized in Annex A and shown in marked-up version at Annex B -

- (a) **clause 14(2)**: to change "*affected by the proposed rescission*" in the English text of paragraph (a) of subclause (2) to "*affected by it*" to

achieve consistency with clause 29(2)(a);

- (b) **clause 45(2)**: to amend our earlier CSA to subclause (2) by changing “*the person*” in the English text to “*that person*” to achieve consistency with the use of “that person” in the same subclause;
- (c) **clause 161(3A)**: to amend our earlier CSA by changing “*or any amendment of it*” in the English text of the newly added subclause (3A) to “*or any amendment to it*” to achieve consistency with other similar references in the Bill;
- (d) **clause 167(1)**: to amend our earlier CSA to paragraph (b)(ii) of subclause (1) by amending “*convicted of an offence under Part 3 or 12*” to read “*convicted of an offence under this Part or Part 3*” to follow the conventional drafting approach;
- (e) **Schedule 1**: to amend the square bracket as “[*ss. 9, 15, 24, 30, ~~& 36~~ & 162A*]” to reflect the fact that reference to clause 162A is made in Schedule 1;
- (f) **section 5 of Schedule 1**: to amend our earlier CSA by replacing “。” with “；” at the end of the definition of “對上公曆年 (preceding calendar year)” in the Chinese text of the newly added subsection (5) as “指第1(a)、(b)或(c)款提述的公曆年對上的一個公曆年。；”;
- (g) **section 6 of Schedule 1**: to amend our earlier CSAs as follows -
 - (i) to amend the Chinese text of newly added subsection (1) to read “如某業務實體在某營業期從事某行為，而該業務實體在該營業期的營業額不超過\$40,000,000，第二行為守則不適用於該業務實體在該營業期從事的行為。” to ensure consistency with the English text of this section;
 - (ii) to delete the word “從” from the Chinese text of the newly added paragraph (a)(ii) of subsection (3) to read “該業務實體在從對上公曆年內終結的財政年度，不足12個月...”;
 - (iii) to replace “。” with “；” at the end of the definition of “對上公曆年 (preceding calendar year)” in the Chinese text of subsection (4)

as “指有從事第(1)款提述的行為的公曆年對上的一個公曆年一；”;

- (h) **Schedule 3**: to amend the square bracket as “[ss. 92, & ~~110 & 113~~]” to reflect the deletion of clause 113;
- (i) **section 29 of Schedule 5**: to amend our earlier CSA by adding “,” before “to the Chief Executive” in the English text of the newly added paragraph (ca) of subsection (2) as “*the duty to give a copy of its annual report, its statement of accounts, and the auditor’s report on the statement of accounts, to the Chief Executive*” to enhance clarity; and
- (j) **section 15 of Schedule 7**: to amend our earlier CSA by amending the Chinese text of the newly added subsection (2A) to read “~~第(2A)~~ **(2)**款提述的通知須”.

10. For Members’ easy reference, we have summarised at **Annex A** all CSAs to Part 7, clause 153 as well as the further CSAs in paragraphs 5 - 9 above. A marked-up version of these CSAs to the Bill is at **Annex B**.

Advice Sought

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

Commerce and Economic Development Bureau
May 2012

Proposed further CSAs and amendments to CSAs to the Competition Bill ¹

Item	Clause	Proposed Amendment	Justifications	Meeting ²
Part 2 (Conduct Rules)				
1.	6(2)	To delete subclause (2) without replacement.	Since the relationship between the first conduct rule and serious anti-competitive conduct has been provided for in other clauses of the Bill, the illustrative examples in clause 6(2) are no longer necessary.	24/4/2012
2.	14(2)	To change “ <i>affected by the proposed rescission</i> ” in the English text of paragraph (a) of subclause (2) to “ <i>affected by it</i> ”.	To achieve consistency with similar phrase in clause 29(2)(a).	-
3.	21	To add a new subclause to provide that the following factors may be taken into account in determining whether an undertaking has a substantial degree of market power – (a) the market share of the undertaking; (b) the undertaking’s power to make pricing and other decisions; (c) any barriers to entry to competitors into the relevant market; and (d) any other relevant matters specified in the guidelines issued under section 35.	To provide more clarity in respect of the relevant factors that may be taken into account in determining whether there is a substantial degree of market power for the purpose of the second conduct rule.	24/4/2012
Part 3 (Complaints and Investigations)				
4.	45(2)	To amend the early CSA by changing “ <i>the person</i> ” in the English text of subclause (2) to “ <i>that person</i> ”.	To achieve consistency with the use of “that person” in the same subclause.	-

¹ The list details all further amendments to the Bill and amendments to CSAs subsequent to the discussion of the earlier CSAs proposed by the Administration at the Bills Committee meeting of 17 April 2012.

² The dates therein refer to meetings of the Bills Committee at which the amendments were considered/ discussed, and/or appeared in the relevant paper for the meeting.

Item	Clause	Proposed Amendment	Justifications	Meeting ²
Part 7 (Private Actions)				
5.	104	To delete the definition of “ <i>stand alone action</i> ” from the clause.	To give effect to the proposal of removing the right of standalone private action from the Bill.	25/10/2011 2/4/2012
6.	106	To amend the clause as “ <i>No person may bring any proceedings independently of this Ordinance, whether under any rule of law or any enactment, in any court in Hong Kong, if –</i> <i>(a) the cause of action is the defendant’s contravention, or involvement in a contravention, of a conduct rule; or</i> <i>(b) the proceedings are founded on more than one cause of action and any of the causes of action is the defendant’s contravention, or involvement in a contravention, of a conduct rule.</i> ”	To clarify that only proceedings that have any of their cause(s) of action being the defendant’s contravention or involvement in a contravention must be brought under the Bill.	2/4/2012 17/4/2012
7.	108	To amend the clause to the effect that follow-on competition proceedings, whether pure or composite, may only be brought in the Competition Tribunal (CT), subject to the right of the Court of First Instance (CFI) to retain the proceedings in the interests of justice, and add that a determination by the CFI that an act is a contravention of conduct rule in a proceeding transferred to the CFI from the Tribunal is a ground for follow-on action. To add “ <i>or the Court of First Instance</i> ” after “ <i>the Tribunal</i> ” in paragraph (b) of subclause (4).	To give effect to the policy intent that the CT should be given primary jurisdiction over competition-related matters. Amendments to be proposed taking account of the possibility that the CFI may adjudicate on a defence based on alleged contravention or alleged involvement in a contravention of a conduct rule that is transferred from the CT.	2/4/2012
8.	109	To amend the clause to provide that in the case of a decision of the CFI, the period during which proceedings for a follow-on action may not be brought is the period during which an appeal may be made to the Court of Appeal.	Amendments to be proposed taking account of the possibility that the CFI may adjudicate on a defence based on alleged contravention or alleged involvement in a contravention that is transferred from the CT.	2/4/2012

Item	Clause	Proposed Amendment	Justifications	Meeting ²
9.	111 112 113 114	To delete the clauses.	To give effect to the proposal of removing the right of standalone private action from the Bill.	25/10/2011 2/4/2012
10.	115	To amend the clause to the effect that the CFI must transfer any proceedings relating to competition claims (except those closely-connected claims in composite claims which the CFI considers that it should not be transferred in the interests of justice), or alleged contravention or alleged involvement in a contravention of a conduct rule as defence in any proceedings before the CFI, to the CT.	To give effect to the policy intent that the CT should be given primary jurisdiction over competition-related matters.	2/4/2012
11.	New (115A)	To provide for the transfer of proceedings from the CT to the CFI. The CT must transfer so much of the proceedings brought before it that are not within the jurisdiction of the CT but the CFI. The CT may transfer any closely-connected claims in composite claims to the CFI if the CT considers that it is in the interests of justice to do so. The CT may also transfer any defence based on alleged contravention or involvement in contravention transferred from the CFI back to the CFI if it is in the interests of justice to do so.	To give effect to the policy intent that the CT should be given primary jurisdiction over competition-related matters, while allowing for flexibility for the CT to decide whether certain proceedings should be transferred to the CFI for adjudication in the interests of justice.	2/4/2012
12.	New (115B)	To provide that the CFI must not transfer back those proceedings transferred from the CT under new clause 115A to the CT.	To ensure finality on the transfer of proceedings between courts.	2/4/2012
13.	New (115C)	To provide that the CT must not transfer back those proceedings transferred from the CFI under clause 115(1) back to the CFI.	To ensure finality on the transfer of proceedings between courts.	2/4/2012
14.	116	To amend the clause to the effect that the CT may make cost orders in proceedings transferred to the CFI.	By virtue of clause 143, the CT also has the same power as the CFI in respect of costs. It is therefore not necessary to detail the manner through which the CT shall order costs as originally set out in clauses 116(2) to 116(4).	2/4/2012

Item	Clause	Proposed Amendment	Justifications	Meeting ²
15.	117	<p>To amend the clause as follows –</p> <ul style="list-style-type: none"> – to amend the heading as “<i>Reference by Court of First Instance <u>or the Tribunal</u> to the Commission for investigation</i>”; – to amend subclause (1) as “<i>In any proceedings brought in before the Court of First Instance or in the Tribunal in which a <u>contravention, or involvement in a contravention</u>, refer the <u>alleged contravention or alleged involvement</u> to the Commission...”;</i> – to amend subclause (2) as “... referred an <u>alleged contravention, or alleged involvement in a contravention</u>, of a conduct rule...” 	<p>To clarify that both an alleged contravention and an alleged involvement in a contravention of a conduct rule can be a cause of action of proceedings before the CFI or the CT.</p>	2/4/2012
16.	118	<p>To amend the clause as follows –</p> <ul style="list-style-type: none"> – to amend subclause (1) as “brought in before the Court of First Instance or in the Tribunal in which a <u>contravention, or involvement in a contravention</u>, of a conduct rule...”; – to amend subclause (2) as “In any <u>Subject to subsection (2A), in such proceedings the Court of First Instance or the Tribunal (as the case requires) is bound, once any period specified in subsection (3) has expired, by any an earlier decision of the Court or Tribunal that the act in question is a contravention, or involvement in a contravention</u>, of the conduct rule.”; – to add a new subclause providing that the decision of the CFI or the Tribunal is not binding on subsequent proceedings before the CFI 	<p>To clarify that both an alleged contravention or an alleged involvement in a contravention of a conduct rule can be a cause of action of proceedings before the CFI or the CT.</p> <p>To enhance clarity of the provision.</p>	2/4/2012 24/4/2012

Item	Clause	Proposed Amendment	Justifications	Meeting ²
		<p>or the Tribunal until the appeal period as prescribed under subclause (3) is expired;</p> <ul style="list-style-type: none"> - to change “<i>subsection (2)</i>” to “<i>subsection (2A)</i>” and “<i>any such appeal</i>” to “<i>such an appeal</i>” in subclause (3). 	Textual amendment.	
17.	119	<p>To amend the clause as follows –</p> <ul style="list-style-type: none"> - to amend subclause (1) as “... <i>an alleged contravention, or alleged involvement in a contravention, of a conduct rule, before the specified Court or the Tribunal or any other court, ...</i>”; - to amend subclause (2) as “... <i>with the leave of the specified Court or the Tribunal or other court, ... imposed by the specified Court or the Tribunal or other court, ...</i>”; - to add a subclause defining “<i>specified Court</i>” as the Court of Final Appeal, the Court of Appeal and the CFI. 	<p>To clarify that both an alleged contravention or an alleged involvement in a contravention of a conduct rule can be a cause of action of proceedings before the CFI or the CT.</p> <p>To clarify that the “other courts” include the CFI, the Court of Appeal as well as the Court of Final Appeal.</p>	2/4/2012
18.	120	<p>To amend the clause –</p> <ul style="list-style-type: none"> - “<i>at the invitation of the specified Court or the Tribunal or other court ... before the specified Court or the Tribunal or any other court involving an alleged contravention, or alleged involvement in a contravention, of a conduct rule...</i> <p>(a) <i>make written submissions to the specified Court or the Tribunal or other court; or</i></p> <p>(b) <i>apply for... the alleged contravention or involvement ...</i>”</p> - to define “<i>specified Court</i>” as the Court of Final Appeal, the Court of Appeal and the CFI. 	<p>To clarify that both an alleged contravention or an alleged involvement in a contravention of a conduct rule can be a cause of action of proceedings before the CFI or the CT.</p> <p>To clarify that the “other courts” include the CFI, the Court of Appeal as well as the Court of Final Appeal.</p>	2/4/2012

Item	Clause	Proposed Amendment	Justifications	Meeting ²
Part 10 (Competition Tribunal)				
19.	141(1)	<p>To amend subclause (1) as follows –</p> <ul style="list-style-type: none"> – to amend paragraph (a) as “... <u>alleged contraventions, or involvements in contraventions,...</u>”; – to amend paragraph (c) as “<u>in respect of ... contraventions, or involvements in contraventions,...</u>”; – to add a new paragraph (ca) as “<u>allegations of contraventions, or involvements in contraventions, of the conduct rules raised as a defence;</u>” and – to amend paragraph (f) as “...<u>matter referred to in paragraphs paragraph (a), (b), (c), (ca), (d), and or (e) if the matters arise out of the same or substantially the same facts.</u>” 	<p>To clarify that an alleged involvement in a contravention of a competition rule also falls within the CT’s jurisdiction.</p> <p>To clarify that follow-on actions in respect of involvements in contraventions of the conduct rules also fall within the CT’s jurisdiction.</p> <p>To provide that defence based on alleged contraventions or involvements in contraventions of the conduct rules falls within the CT’s jurisdiction.</p> <p>To clarify that matters related to matters referred to in subclause (1) that arise out of the same or substantially the same facts (i.e. closely-connected claims) fall within the CT’s jurisdiction.</p>	2/4/2012
20.	149(1)	<p>To amend subclause (1) as “<u>A finding of any fact by the Court of First Instance in any proceedings transferred to it by the Tribunal under section 115A(3), which..... relating to a contravention, or involvement in a contravention, of a conduct rule...</u>”.</p>	<p>To reflect the fact that CFI would adjudicate on a competition matter only if it is a competition related defence transferred to it by the CT.</p>	2/4/2012
21.	153 New (153A)	<p>To amend the clause, and add new clause to remove the leave requirement for appeal to the Court of Appeal, save for interlocutory appeals and against certain orders of the CT.</p>	<p>To lower the threshold for appeal so as to bring it in line with that of the CFI as stipulated in sections 14 and 14AA of the High Court Ordinance.</p>	2/4/2012

Item	Clause	Proposed Amendment	Justifications	Meeting ²
Part 11 (Concurrent Jurisdiction)				
22.	New (161(3A))	To amend the earlier CSA on subclause (3A) by changing “or any amendment of it” in the English text to “or any amendment <u>to it</u> ”.	To achieve consistency with other similar references in the Bill.	-
Part 12 (Miscellaneous)				
23.	167(1)	To amend the earlier CSA to paragraph (b)(ii) of subclause (1) by changing “convicted of an offence under Part 3 or 12” to read “convicted of an offence under this Part or Part 3”.	To follow the conventional drafting approach.	-
Schedule 1 (General Exclusions from Conduct Rules)				
24.		To amend the square bracket as “[ss. 9, 15, 24, 30, & 36 & 162A]”.	To reflect the fact that reference to clause 162A is made in Schedule 1.	-
25.	New (5)	To amend the earlier CSA on subsection (5) by replacing “。” with “;” at the end of the definition of “對上公曆年 (preceding calendar year)” in the Chinese text as “指第 1(a)、(b)或(c) 款提述的公曆年對上的一個公曆年 <u>；</u> ”.	Textual amendment.	-
26.	New (6)	<p>To amend the earlier CSAs as follows –</p> <ul style="list-style-type: none"> – to amend the Chinese text of subsection (1) to read “如某業務實體在某營業期從事某行為，而該業務實體在該營業期的營業額不超過 \$40,000,000，第二行為守則不適用於該業務實體在該營業期從事的行為。”; – to delete the word “從” from the Chinese text of paragraph (a)(ii) of subsection (3) to read a “該業務實體在對上公曆年內終結的財政年度，不足 12 個月...”; 	<p>To ensure consistency with the English text.</p> <p>Textual amendment.</p>	-

Item	Clause	Proposed Amendment	Justifications	Meeting ²
		– to replace “。” with “;” at the end of the definition of “對上公曆年 (preceding calendar year)” in the Chinese text of subsection (4) as “指有從事第(1)款提述的行為的公曆年對上的一個公曆年 <u>一</u> ”。	Textual amendment.	
Schedule 3 (Orders that may be made by Tribunal in relation to contraventions of competition rules)				
27.		To amend the square bracket as “[ss. 92, & 110- 113]”.	To reflect the deletion of clause 113.	-
Schedule 5 (Competition Commission)				
28.	New (28B)	To amend the earlier CSA on subsection (7) by adding “of” after “to a member” in the English text as “to a member <u>of</u> a committee”.	Textual amendment.	24/4/2012
29.	29(2)	To amend the earlier CSA on paragraph (ca) of subsection (2) by adding “,” before “to the Chief Executive” in the English text as “the duty to give a copy of its annual report, its statement of accounts, and the auditor’s report on the statement of accounts_ to the Chief Executive”.	To enhance clarity of the provision.	-
Schedule 7 (Mergers)				
30.	15	To amend the earlier CSA by amending the Chinese text of subsection (2A) to read “第(2A) (2)款提述的通知須”。	Textual amendment	-
Schedule 8 (Consequential and Related Amendments)				
31.	5	To amend section (5) by adding a subsection (2) as follows – “(2) Schedule 1 is amended by adding – “Registrar of the Competition Tribunal Senior Deputy Registrar, Competition Tribunal	To add registrar, senior deputy registrar and deputy registrar of the CT to Schedule 1 of Judicial Officers Recommendation Commission Ordinance (Cap. 92) in view that they are separate and discrete judicial offices distinct from those of the High Court.	-

Item	Clause	Proposed Amendment	Justifications	Meeting ²
		Deputy Registrar, Competition Tribunal” after – “Assistant Registrar, High Court”.”		

COMPETITION BILL
PROPOSED FURTHER COMMITTEE STAGE
AMENDMENTS

(IN MARKED-UP FORM)

[...]

PART 1

PRELIMINARY

[...]

PART 2

THE CONDUCT RULES

Division 1 – Agreements etc. Preventing, Restricting or Distorting Competition

Subdivision 1 – First Conduct Rule

6. Prohibition of anti-competitive agreements, concerted practices and decisions

- (1) An undertaking must not –
- (a) make or give effect to an agreement;
 - (b) engage in a concerted practice; or
 - (c) as a member of an association of undertakings, make or give effect to a decision of the association,

if the object or effect of the agreement, concerted practice or decision is to prevent, restrict or distort competition in Hong Kong.

~~(2) Subsection (1) applies in particular to agreements, concerted practices and decisions that –~~

- ~~(a) directly or indirectly fix purchase or selling prices or any other trading conditions;~~
- ~~(b) limit or control production, markets, technical development or investment; or~~

(e) ~~share markets or sources of supply.~~

(3) Unless the context otherwise requires, a provision of this Ordinance which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a concerted practice and a decision by an association of undertakings (but with any necessary modifications).

(4) The prohibition imposed by subsection (1) is referred to in this Ordinance as the “first conduct rule”.

[...]

Subdivision 2 – Decisions

[...]

14. Rescission of decision

(2) Before rescinding a decision under this section the Commission must –

(a) ~~give notice in writing in any manner it considers appropriate for bringing in order to bring the proposed rescission to the attention of those undertakings it the Commission considers likely to be affected by the proposed rescission it, publish notice of the proposed rescission –~~

(i) stating that the Commission is considering rescinding the decision and the reasons why it is considering the rescission; and

(ii) inviting the undertakings to make representations about the proposed rescission within the period specified in the notice; and

(b) consider any representations received within the period specified in the notice.

[subclauses (1), (2A), (3) to (8) of clause 14 omitted]

[...]

Division 2 – Abuse of Market Power

Subdivision 1 – Second Conduct Rule

21. Abuse of market power

(1) An undertaking that has a substantial degree of market power in a market must not abuse that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong.

(2) For the purpose of subsection (1), conduct may, in particular, constitute such an abuse if it involves –

- (a) predatory behaviour towards competitors; or
- (b) limiting production, markets or technical development to the prejudice of consumers.

(2A) Without limiting the matters that may be taken into account in determining whether an undertaking has a substantial degree of market power in a market, the following matters may be taken into consideration in any such determination –

- (a) the market share of the undertaking;
- (b) the undertaking’s power to make pricing and other decisions;
- (c) any barriers to entry to competitors into the relevant market; and
- (d) any other relevant matters specified in the guidelines issued under section 35 for the purposes of this paragraph.

(3) The prohibition imposed by subsection (1) is referred to in this Ordinance as the “second conduct rule”.

[...]

PART 3

COMPLAINTS AND INVESTIGATIONS

[...]

Division 2 – Investigations

[...]

45. Self-incrimination

- (1) A person is not excused –
- (a) from giving any explanation or further particulars about a document; or
 - (b) from answering any question,

under this Division on the grounds that to do so might expose the person to proceedings referred to in subsection (3).

- (2) No statement made by a person –
- (a) in giving any explanation or further particulars about a document; or
 - (b) in answering any question,

under this Division is admissible against that person in proceedings referred to in subsection (3) unless, in the proceedings, evidence relating to the statement is adduced, or a question relating to it is asked, by that person or on that person's behalf.

- (3) The proceedings referred to in subsections (1) and (2) are –
- (a) proceedings in which the Commission applies for an order for –
 - (i) a pecuniary penalty under section 91; or
 - (ii) a financial penalty under section 168; and
 - (b) any criminal proceedings other than proceedings for –

- (i) an offence under section 55 (Providing false or misleading documents or information);
- (ii) an offence under Part V (Perjury) of the Crimes Ordinance (Cap. 200); or
- (iii) an offence of perjury.

[...]

PART 4

ENFORCEMENT POWERS OF COMMISSION

[...]

PART 5

REVIEW BY TRIBUNAL

[...]

PART 6

ENFORCEMENT BEFORE TRIBUNAL

[...]

PART 7

PRIVATE ACTIONS

Division 1 – General

104. Interpretation

In this Part –

“follow-on action” (後續訴訟) means an action brought by a person who has a right to bring the action under section 108(1);

[“後續訴訟”(follow-on action)指有權根據第 108(1)條提起訴訟的人所提起的
訴訟。]

~~“stand-alone action”(獨立訴訟) means an action brought by a person who has a
right to bring the action under section 111(1).~~

105. Persons involved in contravention of conduct rule

A reference in this Part to a person being involved in a contravention of a conduct rule means a person who –

- (a) attempts to contravene the rule;
- (b) aids, abets, counsels or procures any other person to contravene the rule;
- (c) induces or attempts to induce any other person, whether by threats or promises or otherwise, to contravene the rule;
- (d) is in any way, directly or indirectly, knowingly concerned in or a party to the contravention of the rule; or
- (e) conspires with any person to contravene the rule.

106. No proceedings independent of this Ordinance

No person may bring any proceedings independently of this Ordinance, whether under any rule of law or any enactment, in any court in Hong Kong, if –

- (a) the cause of action is the defendant’s contravention, or involvement in a contravention, of a conduct rule; or
- (b) the proceedings are founded on more than one cause of action and any of the causes of action is the defendant’s contravention, or involvement in a contravention, of a conduct rule.

107. Pure competition proceedings not to be brought in Court of First Instance

No person may bring any proceedings in the Court of First Instance under this Part if the cause of action is only the defendant's contravention, or involvement in a contravention, of a conduct rule.

Division 2 – Follow-on Action

108. Follow-on right of action

(1) A person who has suffered loss or damage as a result of any act that has been determined to be a contravention of a conduct rule has a right of action under this section against –

- (a) any person who has contravened or is contravening the rule; and
- (b) any person who is, or has been, involved in that contravention.

~~(2) Subject to subsection (3), a claim to which this section applies may only be made in proceedings brought before the Tribunal.~~

~~(3) A claim to which this section applies may be made in proceedings before the Court of First Instance if the cause of action in those proceedings is not solely the defendant's contravention, or involvement in a contravention, of a conduct rule.~~

(2) Subject to section 115, a claim to which this section applies may only be made in proceedings brought in the Tribunal, whether or not the cause of action is solely the defendant's contravention, or involvement in a contravention, of a conduct rule.

(4) For the purpose of subsection (1), an act is taken to have been determined to be a contravention of a conduct rule if –

- (a) the Tribunal has made a decision that the act is a contravention of a conduct rule;

- (*ab*) the Court of First Instance has decided, in any proceedings transferred to it by the Tribunal under section 115A(3), that the act is a contravention of a conduct rule;
- (*b*) the Court of Appeal has decided, on an appeal from a decision of the Tribunal or the Court of First Instance, that the act is a contravention of a conduct rule;
- (*c*) the Court of Final Appeal has decided, on an appeal from a decision of the Court of Appeal, that the act is a contravention of a conduct rule; ~~and or~~
- (*d*) a person has made an admission, in a commitment that has been accepted by the Commission, that the person has contravened a conduct rule.

109. Commencement of follow-on actions

(1) The periods during which proceedings for a follow-on action may not be brought are –

- (*a*) in the case of a decision of the Tribunal ~~that conduct is a contravention of a conduct rule~~, the period during which an appeal may be made to the Court of Appeal under section 153;
- (*ab*) in the case of a decision of the Court of First Instance, the period during which an appeal may be made to the Court of Appeal; and
- (*b*) in the case of a decision of the Court of Appeal, the period during which a further appeal may be made to the Court of Final Appeal,

and, where any such appeal or further appeal is made, the period specified in paragraph (*a*), (*ab*) or (*b*) includes the period before the appeal is determined.

(2) Despite subsection (1), the Court of First Instance or the Tribunal may, on the application of ~~the Commission or of the party~~ seeking to bring the

proceedings, permit proceedings for a follow-on action to be brought within any period specified in subsection (1).

(3) Proceedings for a follow-on action may not be brought more than 3 years after the earliest date on which the action could have been commenced following the expiry of a relevant period specified in subsection (1).

110. Tribunal orders in follow-on actions

The Tribunal in a follow-on action may make any one or more of the orders specified in Schedule 3.

Division 3—Stand-alone Action

111. Stand-alone right of action

~~(1) A person who has suffered loss or damage as a result of a contravention of a conduct rule has a right of action under this section against—~~

~~(a) any person who has contravened or who is contravening the rule; and~~

~~(b) any person who is, or has been, involved in that contravention.~~

~~(2) Subject to subsection (3), a claim to which this section applies may only be made in proceedings brought before the Tribunal.~~

~~(3) A claim to which this section applies may be made in proceedings before the Court of First Instance if the cause of action in those proceedings is not solely the defendant's contravention, or involvement in a contravention, of a conduct rule.~~

~~(4) An action may be brought under this section even if—~~

~~(a) a leniency agreement has been made by the Commission regarding the contravention; or~~

~~(b) a commitment has been accepted by the Commission regarding the contravention.~~

112. Commencement of stand-alone actions

~~(1) — A stand alone action may be commenced within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered by the claimant.~~

~~(2) — Despite subsection (1), a stand alone action may not be commenced more than 5 years beginning after the day on which the cause of action accrued.~~

113. Tribunal orders in stand-alone actions

~~The Tribunal in a stand alone action may make any one or more of the orders specified in Schedule 3.~~

Division 4 – Procedure**114. Tribunal may adjourn proceedings pending completion of Commission investigation**

~~(1) — The Tribunal may, either of its own motion or on application by the Commission or a party to the proceedings, adjourn the hearing of a stand-alone action in order to allow the Commission to complete any current or proposed investigation, before proceeding with the hearing.~~

~~(2) — The Tribunal may adjourn the hearing of a stand alone action under subsection (1) on such terms as it thinks fit —~~

~~(a) — for a fixed period; or~~

~~(b) — until the investigation by the Commission has been completed.~~

~~(3) — The Tribunal may, in relation to an adjournment made under this section, either of its own motion or on application by the Commission or a party to the proceedings —~~

~~(a) — extend the period of the adjournment; or~~

~~(b) — vary the terms of the adjournment.~~

115. Transfer of proceedings from Court of First Instance to Tribunal

~~(1) This section applies to proceedings with respect to an alleged contravention of a conduct rule only where neither the Court of First Instance nor the Tribunal has made a decision that the rule has been contravened.~~

~~(2) The Court of First Instance may transfer to the Tribunal so much of any proceedings brought in the Court which—~~

~~(a) are within the jurisdiction of the Tribunal; and~~

~~(b) the Court considers should, in the interests of justice, be transferred to the Tribunal.~~

~~(3) If the Court of First Instance transfers proceedings under subsection (2), the practice and procedure of the Tribunal apply after the transfer.~~

~~(4) If the Court of First Instance does not transfer proceedings to the Tribunal under subsection (2), the Court has the same power in the proceedings as the Tribunal has in a follow on or stand alone action.~~

(1) Subject to subsection (2), the Court of First Instance must transfer to the Tribunal so much of the proceedings before the Court that are within the jurisdiction of the Tribunal.

(2) Subsection (1) does not apply to any proceedings that –

(a) are within the jurisdiction of the Tribunal under section 141(1)(f); and

(b) the Court of First Instance considers should not, in the interests of justice, be transferred to the Tribunal.

(3) Without limiting subsection (1) but subject to section 115B(2), if, in any proceedings before the Court of First Instance, a contravention, or involvement in a contravention, of a conduct rule is alleged as a defence, the Court must, in respect of the allegation, transfer to the Tribunal so much of those proceedings that are within the jurisdiction of the Tribunal.

(4) The practice and procedure of the Tribunal apply to the proceedings transferred by the Court of First Instance under subsection (1) or (3).

115A. Transfer of proceedings from Tribunal to Court of First Instance

(1) The Tribunal must transfer to the Court of First Instance so much of the proceedings brought in the Tribunal that are within the jurisdiction of the Court but are not within the jurisdiction of the Tribunal.

(2) Subject to subsection (1), the Tribunal may transfer to the Court of First Instance any proceedings brought in the Tribunal but only if –

(a) those proceedings are within the jurisdiction of the Tribunal under section 141(1)(f); and

(b) the Tribunal considers that those proceedings should, in the interests of justice, be transferred to the Court.

(3) If the Court of First Instance transfers any proceedings to the Tribunal under section 115(3), the Tribunal may transfer back to the Court so much of those proceedings that the Tribunal considers should, in the interests of justice, be transferred back to the Court.

(4) The practice and procedure of the Court of First Instance apply to the proceedings transferred by the Tribunal under subsection (1), (2) or (3).

115B. No further transfer of proceedings from Court of First Instance to Tribunal

(1) If the Tribunal transfers any proceedings to the Court of First Instance under section 115A(2), the Court must not transfer back those proceedings to the Tribunal.

(2) If the Tribunal transfers any proceedings to the Court of First Instance under section 115A(3) –

(a) section 115(3) does not apply to those proceedings; and

(b) the Court must not transfer back those proceedings to the Tribunal.

115C. No further transfer of proceedings from Tribunal to Court of First Instance

If the Court of First Instance transfers any proceedings to the Tribunal under section 115(1), the Tribunal must not transfer back those proceedings to the Court.

116. Costs in transferred proceedings

(1) If the Court of First Instance makes an order transferring proceedings to the Tribunal under section 115, it may make an order for costs prior to the transfer and of the transfer.

(2) If the Tribunal makes an order transferring proceedings to the Court of First Instance under section 115A, it may make an order for costs prior to the transfer and of the transfer.

~~(2) — The costs of the whole proceedings, both before and after the transfer, are in the discretion of the Tribunal, subject to any order made by the Court of First Instance.~~

~~(3) — The Tribunal may make —~~

~~(a) — an order for costs; and~~

~~(b) — an order as to the scales on which the costs of the proceedings are to be taxed,~~

~~as if the proceedings were originally brought in the Tribunal.~~

~~(4) — The costs of the whole proceedings are to be taxed in the Tribunal.~~

117. Reference by Court of First Instance or Tribunal to Commission for investigation

(1) In any proceedings ~~brought in~~ before the Court of First Instance or ~~in~~ the Tribunal in which a contravention, or involvement in a contravention, of a conduct rule is alleged, the Court or the Tribunal may, either of its own motion or on application by a party to the proceedings, refer the alleged contravention or alleged involvement to the Commission for investigation under this Ordinance.

(2) Where the Court of First Instance or the Tribunal has referred an alleged contravention, or alleged involvement in a contravention, of a conduct rule to the Commission for investigation, it may stay the proceedings before it pending –

- (a) in the case of a referral by the Tribunal, the completion of the Commission's investigation; or
- (b) in the case of a referral by the Court, the completion of the Commission's investigation and any subsequent proceedings in the Tribunal brought as a result of the investigation.

118. Findings of contravention of conduct rules

(1) This section applies to proceedings under this Part ~~brought in~~ before the Court of First Instance or ~~in~~ the Tribunal in which a contravention, or involvement in a contravention, of a conduct rule is alleged in relation to a particular act.

(2) ~~In any~~ Subject to subsection (2A), in such proceedings the Court of First Instance or the Tribunal (as the case requires) is bound, ~~once any period specified in subsection (3) has expired~~, by any ~~an~~ earlier decision of the Court or Tribunal that the act in question is a contravention, or involvement in a contravention, of the conduct rule.

(2A) Subsection (2) does not apply in relation to a decision of the Court of First Instance or the Tribunal until the period specified in subsection (3) has expired.

- (3) The period mentioned in subsection ~~(2)~~ (2A) is –
 - (a) the period during which an appeal may be made to the Court of Appeal under section 153; and
 - (b) where an appeal has been made to the Court of Appeal, the period during which a further appeal may be made to the Court of Final Appeal,

and, where ~~any~~ such an appeal or further appeal is made, the period specified in paragraph (a) or (b) includes the period before the appeal is determined.

119. Intervention by Commission

(1) This section applies to proceedings involving an alleged contravention, or alleged involvement in a contravention, of a conduct rule, before the specified Court or the Tribunal ~~or any other court~~, that are brought by a person other than the Commission.

(2) The Commission may, with the leave of the specified Court or the Tribunal ~~or other court~~, and subject to any conditions imposed by the specified Court or the Tribunal ~~or other court~~, intervene in any such proceedings.

(3) An application for leave under this section must be made in the prescribed form and must be served by the Commission on each party to the proceedings.

(4) If the Commission intervenes in proceedings under this section, the Commission becomes, as from the date of the grant of leave, a party to the proceedings and has all the rights, duties and liabilities of a party to the proceedings.

(5) In this section –
“specified Court” (指明法院) means –

- (a) the Court of Final Appeal;
- (b) the Court of Appeal; or
- (c) the Court of First Instance.

120. Commission may participate in proceedings

(1) The Commission may, with the leave of or at the invitation of the specified Court or the Tribunal ~~or other court~~ (as the case requires), participate in proceedings before the specified Court or the Tribunal ~~or any other court~~ involving an alleged contravention, or alleged involvement in a contravention, of a conduct rule that have been brought by another person and, in particular may –

- (a) make written submissions to the specified Court or the Tribunal or other court; or
- (b) apply for, or join an application for, the adjournment of the proceedings pending the completion of the Commission's investigation into the alleged contravention or involvement that is in issue in the proceedings.

(2) In this section –

“specified Court” (指明法院) means –

- (a) the Court of Final Appeal;
- (b) the Court of Appeal; or
- (c) the Court of First Instance.

PART 8

DISCLOSURE OF INFORMATION

[...]

PART 9

COMPETITION COMMISSION

[...]

PART 10

COMPETITION TRIBUNAL

[...]

Division 2 – Jurisdiction and Powers

141. Jurisdiction of Tribunal

- (1) The Tribunal has jurisdiction to hear and determine –

- (a) applications made by the Commission with regard to alleged contraventions, or alleged involvements in contraventions, of the competition rules;
- (b) applications for the review of reviewable determinations;
- (c) private actions in respect of contraventions, or involvements in contraventions, of the conduct rules;
- (ca) allegations of contraventions, or involvements in contraventions, of the conduct rules raised as a defence;
- (d) applications for the disposal of property;
- (e) applications for the enforcement of commitments; and
- (f) any matter related to a matter referred to in ~~paragraphs~~ paragraph (a), (b), (c), (ca), (d) and or (e) if the matters arise out of the same or substantially the same facts.

(2) In the exercise of its jurisdiction, the Tribunal has the same jurisdiction to grant remedies and reliefs, equitable or legal, as the Court of First Instance.

[...]

149. Findings of fact by Court of First Instance

(1) A finding of any fact by the Court of First Instance in any proceedings transferred to it by the Tribunal under section 115A(3), which is relevant to an issue arising in any other proceedings, either in the Court or in the Tribunal, relating to a contravention, or involvement in a contravention, of a conduct rule, is evidence of that fact in those proceedings if –

- (a) the time for bringing an appeal in respect of the finding has expired and the relevant party has not brought such an appeal; or
- (b) the final decision of a court on such appeal has confirmed the finding.

(2) In this section–

“relevant party” (有關一方) has the meaning given by section 148(2).

[...]

153. Appeal to Court of Appeal

(1) ~~An~~ Subject to subsection (2) and section 153A, an appeal lies as of right to the Court of Appeal against any decision (including a decision as to the amount of any compensatory sanction or pecuniary penalty), determination or order of the Tribunal made under this Ordinance.

~~(2) — An appeal under this section may only be brought —~~

~~(a) — by a person who was a party to the proceedings in which the decision, determination or order of the Tribunal was made; and~~

~~(b) — with the leave of the Court of Appeal.~~

~~(3) — Leave to appeal may not be granted under subsection (2)(b) unless the Court of Appeal is satisfied that —~~

~~(a) — the appeal has a reasonable prospect of success; or~~

~~(b) — there is some other reason in the interests of justice why the appeal should be heard.~~

(2) An appeal does not lie —

(a) against an order of the Tribunal allowing an extension of time for appealing against a decision, determination or order of the Tribunal;

(b) against a decision, determination or order of the Tribunal if it is provided by any Ordinance or by the rules of the Tribunal made under section 156 that the decision, determination or order is final; or

(c) without the leave of the Court of Appeal or the Tribunal, against an order of the Tribunal made with the consent of the parties or relating only to costs that are left to the discretion of the Tribunal.

(3) Rules of the Tribunal made under section 156 may provide for decisions, determinations or orders of any prescribed description to be treated for any prescribed purpose connected with appeals to the Court of Appeal as final or interlocutory.

(3A) An appeal does not lie against a decision of the Court of Appeal as to whether a decision, determination or order of the Tribunal is, for any purpose connected with an appeal to the Court, final or interlocutory.

(4) The Court of Appeal has jurisdiction to hear and determine an appeal under subsection (1) and may –

- (a) confirm, set aside or vary the decision, determination or order of the Tribunal;
- (b) where the decision, determination or order of the Tribunal is set aside, substitute any other decision, determination or order it considers appropriate; or
- (c) remit the matter in question to the Tribunal for reconsideration in the light of the decision of the Court.

(5) Except in the case of an appeal against the imposition, or the amount, of a pecuniary penalty, the making of an appeal under this section does not suspend the effect of the decision, determination or order to which the appeal relates.

153A. Leave to appeal required for interlocutory appeals

(1) Except as provided by the rules of the Tribunal made under section 156, an appeal does not lie to the Court of Appeal against any interlocutory decision, determination or order of the Tribunal unless leave to appeal has been granted by the Court of Appeal or the Tribunal.

(2) Rules of the Tribunal made under section 156 may specify an interlocutory order of any prescribed description as being an interlocutory decision, determination or order to which subsection (1) does not apply and accordingly an appeal lies as of right against the decision, determination or order.

(3) Leave to appeal for the purpose of subsection (1) may be granted –

(a) in respect of a particular issue arising out of the interlocutory decision, determination or order; and

(b) subject to any conditions that the Court of Appeal or the Tribunal considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(4) Leave to appeal may only be granted under subsection (1) if the

Court of Appeal or the Tribunal is satisfied that –

(a) the appeal has a reasonable prospect of success; or

(b) there is some other reason in the interests of justice why the appeal should be heard.

[...]

PART 11

CONCURRENT JURISDICTION RELATING TO TELECOMMUNICATIONS AND BROADCASTING

[...]

161. Memorandum of Understanding

(3A) Before signing any Memorandum of Understanding, or any amendment to it, under this section, the Commission and the Communications Authority must consult the Legislative Council.

[subclauses (1) to (3), (4) to (6) omitted]

PART 12

MISCELLANEOUS

[...]

Division 3 – Indemnities**167. Certain indemnities of officers, employees or agents void**

(1) Subject to section 169, no person may indemnify another person who is or was an officer, employee or agent of an undertaking against liability for paying –

(b) costs incurred in defending an action in which that other person is –

- (i) convicted of contempt of the Tribunal;
 - (ii) convicted of an offence under this Part or Part 3;
- or

[paragraph (a), (b)(iii) of subclause 1, and subclauses (2) and (3) omitted]

[...]

SCHEDULE 1

[ss. 9, 15, 24, 30,
& ~~36~~ & 162A]

GENERAL EXCLUSIONS FROM CONDUCT RULES

[...]

5. Agreements of lesser significance

(5) In this section –

“preceding calendar year” (對上公曆年) means the calendar year preceding the calendar year mentioned in subsection (1)(a), (b) or (c);

[“對上公曆年” (preceding calendar year)指第(1)(a)、(b)或(c)款提述的公曆年對上的一個公曆年；]

[definition of “turnover” (營業額) in subsection (5) and subsections (1) to (4) omitted]

6. Conduct of lesser significance

(1) The second conduct rule does not apply to conduct engaged in by an undertaking the turnover of which does not exceed \$40,000,000 for the turnover period.

[(1) 如某業務實體從事某行為，而該業務實體在營業期的營業額不超過\$40,000,000，第二行為守則不適用於該業務實體從事的行為。]

(3) The turnover period of an undertaking is the period specified as such for the purpose of this subsection in the regulations made under section 162A(2) if –

(a) for an undertaking that has a financial year –

(ii) the financial year of the undertaking that ends in the preceding calendar year is less than 12 months;
or

[(ii) 該業務實體在對上公曆年內終結的財政年度，不足 12 個月；或]

(4) In this section –

“preceding calendar year” (對上公曆年) means the calendar year preceding the calendar year in which the conduct mentioned in subsection (1) is engaged in;

[“對上公曆年” (preceding calendar year)指有從事第(1)款提述的行為的公曆年對上的一個公曆年；]

[definition of “turnover” (營業額) in subsection (4), subsection (2), and subsection (3)(a)(i) and (b) omitted]

SCHEDULE 2

[s. 64]

COMMITMENTS

[...]

SCHEDULE 3

[ss. 92, & 110
& 113]

ORDERS THAT MAY BE MADE BY TRIBUNAL IN RELATION TO
CONTRAVENTIONS OF COMPETITION RULES

[...]

SCHEDULE 4

[ss. 95 & 98]

PROVISIONS THAT MAY BE CONTAINED IN ORDERS MADE
BY TRIBUNAL IN RELATION TO ANTICIPATED MERGERS
AND MERGERS

[...]

SCHEDULE 5

[ss. 2, 121, 128 &
165]

COMPETITION COMMISSION

[...]

PART 7A

REGISTER AND DISCLOSURE OF INTERESTS

[...]

28B. Disclosure of interests

(7) Subsections (1), (2) and (6) apply to a member of a committee established by the Commission, as if any reference to the Commission in subsections (1) and (6) were a reference to the committee.

[subsections (1) to (6) omitted]

PART 8

DELEGATION

29. Delegation by Commission

(2) Despite subsection (1), the Commission may not delegate any of the following functions –

(ca) the duty to give a copy of its annual report, its statement of accounts, and the auditor's report on the statement of accounts, to the Chief Executive under section 26 of this Schedule;

[paragraphs (a), (b), (ba), (bb), (c), (d) to (l), (la), (m) to (o) of subsection (2), subsections (1) and (3) omitted]

[...]

MATTERS THAT ~~MAY~~MUST BE PROVIDED FOR IN
MEMORANDUM OF UNDERSTANDING

[...]

SCHEDULE 7

[ss. 2, 3, 81 &
162]

MERGERS

[...]

PART 5

DECISIONS

[...]

15. **Rescission of decision**

(2A) The notice referred to in subsection (2) must be published –

[第(2)款提述的通知須一]

[paragraphs (a) and (b) of subsection (2A), and subsections (1), (2), (3) to (6) omitted]

[...]

SCHEDULE 8

[s. 175]

CONSEQUENTIAL AND RELATED AMENDMENTS

[...]

PART 3

AMENDMENTS TO JUDICIAL OFFICERS RECOMMENDATION
COMMISSION ORDINANCE

5. **Judicial office**

(1) Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap. 92) is amended by adding –

“President, Competition Tribunal
Deputy President, Competition Tribunal
Member, Competition Tribunal”

after –

“Recorder of the Court of First Instance”.

(2) Schedule 1 is amended by adding –

“Registrar of the Competition Tribunal
Senior Deputy Registrar, Competition Tribunal
Deputy Registrar, Competition Tribunal”

after –

“Assistant Registrar, High Court”.

[...]

SCHEDULE 9

[s. 176]

TRANSITIONAL AND SAVINGS PROVISIONS

[...]