

**Bills Committee on Competition Bill**

**List of follow-up actions arising from the discussion  
at the meeting on 21 June 2011**

At the meeting on 21 June 2011, the Administration was requested to provide written responses to the following concerns/requests –

- (a) consider stating expressly in the Bill the policy intent that only conduct which "had an appreciable adverse effect" on competition would be caught by the conduct rules;
- (b) consider following the Competition Act of Singapore that while vertical agreements would generally be exempted from the first conduct rule, the government could regulate those vertical agreements that would have an adverse impact on competition as and when necessary by orders;
- (c) in respect of vertical agreements and exchange of information, provide overseas case law examples to which the Administration had made reference in drafting the Bill;
- (d) at the request of Dr Hon LEUNG Ka-lau, advise whether a private hospital that allocated its resources, such as hospital beds and facilities, to certain affiliated specialists only or restricted the right of other equally qualified specialists to use its resources would be a contravention of the second conduct rule;
- (e) in relation to clause 153 of the Bill concerning appeals against any decision, determination or order of the Competition Tribunal, advise whether the requirement of leave to appeal under the Bill, i.e. the appeal had a reasonable prospect of success, was the same as that for appeals from the Court of First Instance to the Court of Appeal and if not, the reason(s) for the difference;
- (f) with reference to the Guidelines on Market Definition (the Guidelines) –
  - (i) provide information on typical overseas case law examples to help illustrate the concept of substitution; and

- (ii) advise how long it would normally take for overseas competition authorities to conduct the hypothetical monopolist test;
- (g) in relation to clause 6 of the Bill concerning the application of the first conduct rule, explain the rationale for choosing the three examples stated in subclause (2), and advise why it did not follow the competition laws of the United Kingdom and Singapore by including the following scenario in subclause (2):
  - (i) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and
  - (ii) make the conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts;
- (h) in relation to clause 7 of the Bill concerning the "object" of an agreement, consider the proposal of the Law Society of Hong Kong (Law Soc) to revise subclause (2) to spell out explicitly that the inference of an undertaking's object would be reached objectively;
- (i) in relation to clause 8 of the Bill concerning territorial application of the first conduct rule, consider revising the present drafting of the provision such that the first conduct rule would only apply "if the agreement is, or is intended to be, implemented in Hong Kong";
- (j) provide information on
  - (i) existing reciprocal arrangements of enforcement of judgments between Hong Kong and other jurisdictions; and
  - (ii) international co-operation arrangements/agreements in competition matters;
- (k) at the request of Ir Dr Hon Raymond HO, advise whether a tender exercise stipulating that a certain number of staff of the bidding companies should be members of a certain professional body would be an anti-competitive conduct contravening the conduct rules;

- (l) consider deleting clause 9(3) of the Bill; and
- (m) in relation to clauses 9 to 14 of the Bill, advise whether the competition laws of other overseas jurisdictions provided for a procedure under which undertakings might apply for a decision from the competition authorities as to whether or not an agreement, concerted practice or decision would contravene the conduct rules or was excluded or exempted from the application of the conduct rules.

Council Business Division 1  
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