

Bills Committee on Competition Bill

List of follow-up actions arising from the discussion at the meeting on 6 December 2011

At the meeting on 6 December 2011, the Administration was requested to provide written responses to the following concerns/requests –

- (a) provide a table listing out all penalties that could be imposed under the Bill;
- (b) in relation to clause 38 on guidelines regarding complaints, ensure that the Competition Commission would in the above guidelines clearly specify the basic information which a complainant had to provide when making complaints to it, so as to facilitate complaint handling;
- (c) study whether the powers conferred by a warrant under clause 50 were comparable to those in other Hong Kong laws including but not limited to the Copyright Ordinance (Cap. 528) and in laws of overseas jurisdictions;
- (d) provide a paper on whether other Hong Kong laws provided powers on retention of property similar to those under clause 56;
- (e) in relation to Schedule 1 on general exclusions from conduct rules, provide a paper, with examples, to clarify the meaning of "entrusted by the Government" and the scope of "services of general economic interest" in section 3;

Drafting issues

- (f) Part 3 – complaints and investigations
 - (i) with reference to overseas practices, consider amending clause 37 to ensure that, if according to clauses 37(2)(a) and 37(2)(b), the Competition Commission refused to investigate a complaint on grounds that the complaint was trivial, frivolous or vexatious, or was misconceived or lacking in substance, the Commission would notify the complainant concerned in writing with reasons;

- (ii) consider amending clause 39(1)(c) to clarify that the Competition Tribunal could also refer any alleged contravention of a conduct rule to the Competition Commission for investigation, so as to achieve consistency with clause 117;
- (iii) consider the suggestion of the Law Society of Hong Kong in its submission (LC Paper No. CB(1)1219/10-11(02)) that clause 45(2) should be amended to give a person providing the information/answers concerned the right to adduce and to have such information/answers admitted if that person chose to do so;
- (iv) clause 48 provides that a judge of the Court of First Instance might issue a warrant to enter and search any premises if the judge was satisfied, on application made on oath by an authorized officer, that there were reasonable grounds to suspect that there were or were likely to be, on the premises, documents that might be relevant to an investigation by the Competition Commission. In this respect, the Administration was requested to:
 - review the appropriateness of the threshold of "reasonable grounds to suspect" which some members regarded as being too low a requirement for the issue of search warrants; and
 - provide information on whether similar thresholds were adopted in other Hong Kong laws and if so, the relevant details;
- (v) some members expressed concern that it might not be appropriate to confer the many powers referred to in clause 50(1) upon just any person whom an authorized officer executing a warrant issued under clause 48 considered necessary to assist him/her in performing the function. With reference to other Hong Kong laws, consider amending clauses 50(2) and 50(3) by:
 - specifying the types of persons to whom an authorized officer might call upon to assist him/her in performing the above function, and imposing certain restrictions on the powers thus conferred; or

- only empowering the authorized officer to call upon persons to assist him/her without further conferring the powers concerned to such persons;
- (vi) amend the following phrases in the Chinese text of the clauses to achieve consistency with similar phrases appearing elsewhere in the Bill:
 - (1) amend "複本" in clause 41(2)(a) to "副本" (as in clause 56);
 - (2) amend "罔顧後果地" in clause 53(1)(a) to "罔顧實情地" (as in clause 55(2)(b)); and
 - (3) amend "法庭" in clause 56(4) to "法院" (as in other clauses in the Bill);
- (g) Part 8 – disclosure of information
 - (i) introduce Committee Stage amendments to clauses 121 and 123 in consequence of the passage of the Communications Authority Bill at the Council meeting on 30 June 2011; and
 - (ii) according to clause 122(2), information provided to the Competition Commission would be regarded as confidential if the provider of the information identified it as confidential and gave a statement in writing setting out the reasons concerned. While noting the need to protect providers of the information, some members expressed concern that information so provided might be too easily classified as confidential by virtue of clause 122(2), even though the claims of confidentiality were unconvincing. The Administration was requested to consider refining the clause to address such concern; and
- (h) Schedule 7
 - (i) with reference to overseas practices, consider whether amendments would be introduced to section 12 to ensure that the Competition Commission would make use of the latest technology available (in particular the Internet) to publish the electronic copy of all notices published under section 12(1)(a), in order that the application for a decision as to whether or not a merger was excluded from the application of the merger rule could be brought to the attention of those the Commission considered likely to be affected by its decision within the

period for making representations to the Commission about the application;

- (ii) amend the phrase "任何行動" in the Chinese text of section 14 to more clearly reflect that "any action" in the English text of this section referred to legal action as in the case of clauses 12 and 27 of the Bill; and
- (iii) amend the phrase "作何事情" in the Chinese text of section 15(6) to "任何事情".

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