

Bills Committee on Competition Bill

Committee Stage Amendments

Competition Bill

Committee Stage

Amendments to be moved by the Secretary for Commerce and Economic Development

<u>Clause</u>	<u>Amendment Proposed</u>
2	By renumbering the clause as clause 2(1).
2(1)	By deleting the definition of “shadow director” and substituting— ““shadow director” (幕後董事), in relation to a company, means a person in accordance with whose directions or instructions all the directors or a majority of the directors of the company are accustomed to act, but a person is not to be regarded as a shadow director by reason only that all the directors or a majority of the directors act on advice given by that person in a professional capacity;”.
2(1)	By deleting the definitions of “Broadcasting Authority”, “competition regulator” and “Telecommunications Authority”.
2(1)	By adding— ““Communications Authority” (通訊事務管理局) means the Communications Authority established by section 3 of the Communications Authority Ordinance (Cap. 616);

“company secretary” (公司秘書) includes any person occupying the position of company secretary, by whatever name called;

“competition authority” (競爭事務當局) means—

- (a) the Commission; or
- (b) the Communications Authority;

“serious anti-competitive conduct” (嚴重反競爭行為) means any conduct that consists of any of the following or any combination of the following—

- (a) fixing, maintaining, increasing or controlling the price for the supply of goods or services;
- (b) allocating sales, territories, customers or markets for the production or supply of goods or services;
- (c) fixing, maintaining, controlling, preventing, limiting or eliminating the production or supply of goods or services;
- (d) bid-rigging;

Note—

See also subsection (2).”.

2(1) In the Chinese text, in the definition of “競委會資金”, by deleting “金。” and substituting “金 ;”.

2 By adding—

“(2) For the purposes of the definition of “serious

anti-competitive conduct”—

“bid-rigging” (圍標) means—

- (a) an agreement—
 - (i) that is made between or among 2 or more undertakings whereby one or more of those undertakings agrees or undertakes not to submit a bid or tender in response to a call or request for bids or tenders, or agrees or undertakes to withdraw a bid or tender submitted in response to such a call or request; and
 - (ii) that is not made known to the person calling for or requesting bids or tenders at or before the time when a bid or tender is submitted or withdrawn by a party to the agreement or by an entity controlled by any one or more of the parties to the agreement; or
- (b) a submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by an agreement—
 - (i) that is made between or among 2 or more undertakings; and
 - (ii) that is not made known to the person calling for or requesting

bids or tenders at or before the time when a bid or tender is submitted or withdrawn by a party to the agreement or by an entity controlled by any one or more of the parties to the agreement;

“goods” (貨品) includes real property;

“price” (價格) includes any discount, rebate, allowance, price concession or other advantage in relation to the supply of goods or services;

“supply” (供應)—

- (a) in relation to goods, means sell, rent, lease or otherwise dispose of the goods, an interest in the goods or a right to the goods, or offer so to dispose of the goods or of such an interest or right; and
- (b) in relation to services, means sell, rent or otherwise provide the services or offer so to provide the services.

(3) A note located in the text of this Ordinance is provided for information only and has no legislative effect.”.

6 By deleting subclause (2).

7 In the heading, by adding “**and “effect”**” before “**of**”.

7 By adding—

“(3) If an agreement, concerted practice or decision has more than one effect, it has the effect of preventing,

restricting or distorting competition under this Ordinance if one of its effects is to prevent, restrict or distort competition.”.

10 By deleting subclause (1) and substituting—

“(1) Before making a decision on an application made under section 9, the Commission must—

(a) in order to bring the application to the attention of those the Commission considers likely to be affected by the decision, publish notice of the application—

(i) through the Internet or a similar electronic network; and

(ii) in any other manner the Commission considers appropriate; and

(b) consider any representations about the application that are made to the Commission.”.

12(2) By adding “to the extent of the first conduct rule or this Part, and” after “only”.

14(2)(a) By deleting “give notice in writing in any manner it considers appropriate for bringing the proposed rescission to the attention of those undertakings it considers likely to be affected by the proposed rescission” and substituting “in order to bring the proposed rescission to the attention of those undertakings the Commission considers likely to be affected by it, publish notice of the proposed rescission”.

- 14 By adding—
- “(2A) The notice referred to in subsection (2) must be published—
- (a) through the Internet or a similar electronic network; and
- (b) in any other manner the Commission considers appropriate.”.
- 14(3) By deleting “a notice” and substituting “the notice published”.
- 14(3) By deleting “given” and substituting “published”.
- 14(4)(a) By deleting “given” and substituting “published”.
- 16 By deleting subclause (1) and substituting—
- “(1) Before issuing a block exemption order, the Commission must—
- (a) in order to bring the proposed block exemption order to the attention of those the Commission considers likely to be affected by it, publish notice of the proposed block exemption order—
- (i) through the Internet or a similar electronic network; and
- (ii) in any other manner the Commission considers appropriate; and
- (b) consider any representations about the proposed block exemption order that are made to the Commission.”.

20 By deleting subclause (2) and substituting—

“(2) Before varying or revoking a block exemption order, the Commission must—

- (a) in order to bring the proposed variation or revocation to the attention of those the Commission considers likely to be affected by it, publish notice of the proposed variation or revocation—
 - (i) through the Internet or a similar electronic network; and
 - (ii) in any other manner the Commission considers appropriate; and
- (b) consider any representations about the proposed variation or revocation that are made to the Commission.”.

21 By adding—

“(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.”.

22 In the heading, by adding “**and “effect”**” before “**of**”.

22 By adding—

“(3) If conduct has more than one effect, it has the effect of preventing, restricting or distorting competition under this Ordinance if one of its effects is to prevent, restrict or distort competition.”.

25 By deleting subclause (1) and substituting—

“(1) Before making a decision on an application made under section 24, the Commission must—

(a) in order to bring the application to the attention of those the Commission considers likely to be affected by the decision, publish notice of the application—

(i) through the Internet or a similar electronic network; and

(ii) in any other manner the Commission considers appropriate; and

(b) consider any representations about the application that are made to the Commission.”.

27(2) By adding “to the extent of the second conduct rule or this Part, and” after “only”.

- 27(2) In the Chinese text, by deleting “凡” and substituting “如”.
- 29(2) In the Chinese text, by deleting “取消決定” and substituting “取消任何決定”.
- 29(2)(a) By deleting “give notice in writing in any manner it considers appropriate for bringing the proposed rescission to the attention of those undertakings it considers likely to be affected by the proposed rescission” and substituting “in order to bring the proposed rescission to the attention of those undertakings the Commission considers likely to be affected by it, publish notice of the proposed rescission”.
- 29 By adding—
- “(2A) The notice referred to in subsection (2) must be published—
- (a) through the Internet or a similar electronic network; and
- (b) in any other manner the Commission considers appropriate.”.
- 29(3) By deleting “a notice” and substituting “the notice published”.
- 29(3) By deleting “given” and substituting “published”.
- 29(4)(a) By deleting “given” and substituting “published”.
- 29(7) In the Chinese text, by adding “的” before “生效”.
- 33(2) In the Chinese text, by adding “藉決議通過” before “修訂該命令”.

33(3) In the Chinese text, by deleting “屆會期” and substituting “會期”.

33(5) In the Chinese text, by deleting “屆會期” and substituting “會期”.

34 By deleting subclause (3) and substituting—

“(3) The Commission must make the register available for inspection by any person—

(a) at the offices of the Commission during ordinary business hours;

(b) through the Internet or a similar electronic network; and

(c) in any other manner the Commission considers appropriate.”.

35(4) By adding “the Legislative Council and” after “consult”.

35 By deleting subclause (5) and substituting—

“(5) The Commission must make available copies of all guidelines issued under this section and of all amendments made to them—

(a) at the offices of the Commission during ordinary business hours;

(b) through the Internet or a similar electronic network; and

(c) in any other manner the Commission considers appropriate.

(6) A person does not incur any civil or criminal liability only because the person has contravened any guidelines issued under this section or any amendments made

to them.

(7) If, in any legal proceedings, the Tribunal or any other court is satisfied that a guideline is relevant to determining a matter that is in issue—

(a) the guideline is admissible in evidence in the proceedings; and

(b) proof that a person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.

(8) Guidelines issued under this section and all amendments made to them are not subsidiary legislation.”.

39(1)(c) By adding “or the Tribunal” before “has”.

41(2)(a) In the Chinese text, by deleting “複本” and substituting “副本”.

45 By deleting subclause (2) and substituting—

“(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.”.

48 By renumbering the clause as clause 48(1).

- 48(1) By adding “authorizing a person specified in the warrant, and any other persons who may be necessary to assist in the execution of the warrant,” after “warrant”.
- 48 By adding—
“(2) A warrant under subsection (1) may be issued subject to any conditions specified in it that apply to the warrant itself or to any further authorization under it (whether granted under its terms or any provision of this Ordinance).”.
- 50(1) By deleting “named” and substituting “specified”.
- 50 By deleting subclauses (2) and (3).
- 53(1)(a) In the Chinese text, by deleting “後果” and substituting “實情”.
- 56(2) In the Chinese text, by deleting “並非” and substituting “在其他情況下”.
- 56 In the Chinese text, by deleting subclause (3) and substituting—
“(3) 在競委會發給上述核證副本之前，該會須在該會認為適當的時間及地點，容許在其他情況下對該文件享有管有權的人或該人所授權的人，查閱和複製該文件，或摘錄其內容。”.
- 56(4) In the Chinese text, by deleting “法庭” and substituting “法院”.
- New By adding—
“**57A. Legal professional privilege**

(1) Subject to subsection (2), this Part does not affect any claims, rights or entitlements that would, but for this Part, arise on the ground of legal professional privilege.

(2) Subsection (1) does not affect any requirement under this Ordinance to disclose the name and address of a client of a counsel or solicitor.”.

58(3) By adding “the Legislative Council and” after “consult”.

58 By deleting subclause (4) and substituting—

“(4) The Commission must make available copies of all guidelines issued under this Part and of all amendments made to them—

- (a) at the offices of the Commission during ordinary business hours;
- (b) through the Internet or a similar electronic network; and
- (c) in any other manner the Commission considers appropriate.

(5) A person does not incur any civil or criminal liability only because the person has contravened any guidelines issued under this Part or any amendments made to them.

(6) If, in any legal proceedings, the Tribunal or any other court is satisfied that a guideline is relevant to determining a matter that is in issue—

- (a) the guideline is admissible in evidence in the proceedings; and
- (b) proof that a person contravened or did not contravene the guideline may be relied on by any party to the proceedings

as tending to establish or negate the matter.

(7) Guidelines issued under this Part and all amendments made to them are not subsidiary legislation.”.

59 By adding—

“(1A) The action referred to in subsection (1)(a) does not include making a payment to the Government.”.

61(1)(b) In the English text, by adding “new” before “commitment”.

63 By deleting subclause (3) and substituting—

“(3) The Commission must make the register available for inspection by any person—

- (a) at the offices of the Commission during ordinary business hours;
- (b) through the Internet or a similar electronic network; and
- (c) in any other manner the Commission considers appropriate.”.

66 By deleting subclause (1) and substituting—

“(1) Subsection (2) applies where—

- (a) the Commission has reasonable cause to believe that—
 - (i) a contravention of the first conduct rule has occurred and the contravention involves serious anti-competitive conduct; or
 - (ii) a contravention of the second conduct rule has occurred; and

(b) the Commission has not yet brought proceedings in the Tribunal in respect of the contravention.”.

66(3) By deleting paragraph (a).

66 By adding—

“(4) The action that may be specified by the Commission under subsection (3)(b) does not include making a payment to the Government.”.

77 By deleting everything after “the infringement notice” and substituting—

“—

(a) through the Internet or a similar electronic network; and

(b) in any other manner the Commission considers appropriate.”.

78 By deleting the definition of “Commission”.

78 In the definition of “officer”, in paragraph (a), by adding “company” before “secretary”.

78 In the Chinese text, in the definition of “高級人員”, in paragraph (b), by deleting “員 ; ” and substituting “員 。”.

80 By deleting subclause (3) and substituting—

“(3) A notice under subsection (2) must specify the period within which representations may be made to the

Commission about the proposed termination.

(4) The period specified for the purpose of subsection (3) must be a period of at least 30 days beginning after the day on which the notice is given.

(5) Before terminating a leniency agreement, the Commission must consider any representations about the proposed termination that are made to it.”.

New In Part 4, by adding—

“Division 4—Warning Notices

80A. Warning notices

(1) If the Commission has reasonable cause to believe that—

(a) a contravention of the first conduct rule has occurred; and

(b) the contravention does not involve serious anti-competitive conduct,

the Commission must, before bringing proceedings in the Tribunal against the undertaking whose conduct is alleged to constitute the contravention, issue a notice (a “warning notice”) to the undertaking.

(2) A warning notice must—

(a) describe the conduct (the “contravening conduct”) that is alleged to constitute the contravention;

(b) identify the undertaking (the “contravening undertaking”) that has engaged in the contravening conduct;

(c) identify the evidence or other materials that the Commission relies on in support

of its allegations;

- (d) state—
- (i) that the Commission requires the contravening undertaking to cease the contravening conduct within the period (the “warning period”) specified in the notice, and not to repeat that conduct after the warning period;
 - (ii) that, if the contravening conduct continues after the expiry of the warning period, the Commission may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct; and
 - (iii) that, if the contravening undertaking repeats the contravening conduct after the expiry of the warning period, the Commission may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct and the repeated conduct; and
- (e) indicate the manner in which the contravening undertaking may cease the contravening conduct.

(3) In determining the warning period, the Commission must have regard to the amount of time which

the contravening undertaking is likely to require to cease the contravening conduct.

- (4) After the expiry of the warning period—
 - (a) if the Commission has reasonable cause to believe that the contravening conduct continues after the expiry, the Commission may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct; and
 - (b) if the Commission has reasonable cause to believe that the contravening undertaking repeats the contravening conduct after the expiry, the Commission may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct and the repeated conduct.

(5) To avoid doubt, proceedings under subsection (4) may not be brought in respect of any period that precedes the warning period.

(6) The Commission may, either of its own volition or on application made to it in writing, extend the warning period specified in a warning notice if it considers that there is a good reason for doing so.

(7) An application for an extension under subsection (6) must be made before the expiry of the period sought to be extended.”.

- “(ba) a decision relating to the issue of a block exemption order, made by the Commission under section 15;
- (bb) a decision relating to the variation or revocation of a block exemption order, made by the Commission under section 20;”.

84 By deleting subclause (3) and substituting—

“(3) On the hearing of the case, the Court of Appeal may—

- (a) determine the question stated;
- (b) amend the case or require the Tribunal to amend the case in any manner the Court specifies; or
- (c) remit the case to the Tribunal for reconsideration in the light of the decision of the Court.”.

91 By deleting subclause (3) and substituting—

“(3) The amount of a pecuniary penalty imposed under subsection (1) in relation to conduct that constitutes a single contravention may not exceed in total—

- (a) subject to paragraph (b), 10% of the turnover of the undertaking concerned for each year in which the contravention occurred; or
- (b) if the contravention occurred in more than 3 years, 10% of the turnover of the undertaking concerned for the 3 years in which the contravention occurred that saw the highest, second highest and third highest turnover.”.

- 91 By deleting subclause (4) and substituting—
“(4) In this section—
“turnover” (營業額) means the total gross revenues of an undertaking obtained in Hong Kong;
“year” (年度) means the financial year of an undertaking or, if the undertaking does not have a financial year, a calendar year.”.
- 92(3) In the Chinese text, by deleting “請。” and substituting “請，”.
- 94(1) In the Chinese text, by deleting “開支或” and substituting “開支及”.
- 99(2)(b) By adding “or provisional liquidator” after “liquidator”.
- 101(2)(c) In the Chinese text, by deleting “該人” and substituting “某人”.
- 104 In the definition of “follow-on action”, by deleting “108(1);” and substituting “108(1).”.
- 104 By deleting the definition of “stand-alone action”.
- 106 By deleting everything after “if” and substituting—
“—
(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."

- 108 By deleting subclauses (2) and (3) and substituting—
- “(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.”.
- 108(4) By adding—
- “(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;”.
- 108(4)(b) By adding “or the Court of First Instance” after “Tribunal”.
- 108(4)(c) By deleting “and” and substituting “or”.
- 109(1) By deleting paragraph (a) and substituting—
- “(a) in the case of a decision of the Tribunal, 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”.
- 109(1) By adding “, (ab)” after “paragraph (a)”.

- 109 By deleting subclause (2) and substituting—
- “(2) Despite subsection (1), the Court of First Instance or the Tribunal may, on the application 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).”.
- Part 7 By deleting Division 3.
- 114 By deleting the clause.
- 115 By deleting the clause and substituting—
- “115. Transfer of proceedings from Court of First Instance to Tribunal**
- (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 By deleting subclauses (2), (3) and (4) and substituting—

“(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.”.

117 In the heading, by adding “**or Tribunal**” after “**Instance**”.

117 By deleting subclause (1) and substituting—

“(1) In any proceedings before the Court of First Instance or 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.”.

117(2) By adding “, or alleged involvement in a contravention,” after “contravention”.

118 By deleting subclauses (1) and (2) and substituting—

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

(2) Subject to subsection (2A), in such proceedings the Court of First Instance or the Tribunal (as the case requires) is bound by 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.”.

118(3) By deleting “(2)” and substituting “(2A)”.

118(3) By deleting “any such” and substituting “such an”.

119 By deleting subclauses (1) and (2) and substituting—

“(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, that are brought by a person other than the Commission.

(2) The Commission may, with the leave of the

specified Court or the Tribunal, and subject to any conditions imposed by the specified Court or the Tribunal, intervene in any such proceedings.”.

119 By adding—

- “(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 By deleting the clause and substituting—

“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 (as the case requires), participate in proceedings before the specified Court or the Tribunal 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
- (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.”.

121 In the definition of “specified person”, by deleting paragraphs (*d*), (*e*), (*f*), (*g*) and (*h*) and substituting—

- “(d) the Communications Authority;
- (e) any person who is or was a member of the Communications Authority;
- (f) any person who is or was a member of a committee of the Communications Authority, appointed under section 17 of the Communications Authority Ordinance (Cap. 616);
- (g) any person who is or was a public officer serving in the Office of the Communications Authority;
- (h) any person who is or was an employee or agent of the Office of the Communications Authority; or”.

123(1) By deleting “, the Telecommunications Authority and the Broadcasting Authority” and substituting “and the Communications Authority”.

125(1)(*h*) By deleting “regulator” and substituting “authority”.

125(2)(*c*)(i) By adding “company” before “secretary”.

139(2) By deleting “may” and substituting “is to”.

141(1) In paragraph (*a*), by adding “, or alleged involvements in

contraventions,” after “contraventions”.

141(1) In paragraph (c), by adding “, or involvements in contraventions,” after “contraventions”.

141(1) By adding—
“(ca) allegations of contraventions, or involvements in contraventions, of the conduct rules raised as a defence;”.

141(1) By deleting paragraph (f) and substituting—
“(f) any matter related to a matter referred to in paragraph (a), (b), (c), (ca), (d) or (e) if the matters arise out of the same or substantially the same facts.”.

142(2)(a) By deleting “in civil or criminal proceedings”.

149(1) By deleting everything before paragraph (a) and substituting—
“(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 other proceedings if—”.

153 By deleting subclauses (1), (2) and (3) and substituting—
“(1) 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 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.”.

New

In Part 10, in Division 3, by adding—

“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 decision, determination or 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.”.

- 157 By deleting the clause.
- 158 In the heading, by deleting “**Telecommunications**” and substituting “**Communications**”.
- 158(1) By deleting “Telecommunications Authority” and substituting “Communications Authority”.
- 158(1) By deleting paragraphs (a) and (b) and substituting—
- “(a) licensees under the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562);
 - (b) persons who, although not such licensees, are persons whose activities require them to be licensed under the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562); or”.
- 158(2) By deleting “Telecommunications” and substituting “Communications”.
- 159 By deleting the clause.
- 160 By deleting the clause and substituting—
- “160. Transfer of competition matter between competition authorities**
- (1) Where one competition authority is performing a function in relation to a competition matter and another competition authority also has jurisdiction to perform functions in relation to that matter, the 2 competition authorities may agree that the matter be transferred to and be

dealt with by one of them.

(2) Where more than one competition authority has jurisdiction to perform functions in relation to a competition matter, if one of them is performing or has performed a function in relation to that matter, then, unless there is an agreement of a kind mentioned in subsection (1), the other competition authority must not perform any function in relation to that matter.”.

161(1) By deleting “, the Telecommunications Authority and the Broadcasting Authority” and substituting “and the Communications Authority”.

161(2) By deleting “may” and substituting “must”.

161(3) By deleting “, the Telecommunications Authority and the Broadcasting Authority” and substituting “and the Communications Authority”.

161 By adding—
“(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.”.

161 By deleting the subclause (4) and substituting—
“(4) The Commission and the Communications Authority must, within 6 weeks after the Memorandum of Understanding, or any amendment to it, is signed by them, publish it in any manner they consider appropriate.

(5) The Commission and the Communications

Authority must make available copies of any Memorandum of Understanding prepared and signed under this section and of all amendments made to it—

- (a) at their offices during ordinary business hours;
- (b) through the Internet or a similar electronic network; and
- (c) in any other manner they consider appropriate.

(6) A Memorandum of Understanding prepared and signed under this section and all amendments made to it are not subsidiary legislation.”.

New

By adding—

“162A. Determination of turnover of undertaking

(1) For the purposes of this Ordinance, the turnover of an undertaking is to be determined in accordance with the regulations made by the Secretary for Commerce and Economic Development under subsection (2).

(2) The Secretary for Commerce and Economic Development may, by regulations published in the Gazette, provide for the determination of the turnover of an undertaking.

(3) Without limiting subsection (2), the regulations made under that subsection may—

- (a) specify a period as the turnover period of an undertaking for the purpose of section 5(4) or 6(3) of Schedule 1;
- (b) provide for different ways for the

determination of the turnover of an undertaking obtained in Hong Kong or outside Hong Kong; and

- (c) provide for different ways for the determination of the turnover of an undertaking in respect of different periods, including—
- (i) a calendar year;
 - (ii) a financial year; and
 - (iii) a period specified as the turnover period of the undertaking under paragraph (a).”.

- 166(1)(d) By deleting subparagraph (ii) and substituting—
- “(ii) by sending it by post in a letter addressed to the undertaking at any place in Hong Kong at which the undertaking carries on business or, if the undertaking’s address is unknown, addressed to the undertaking’s last known place of business;”.
- 167(1)(b)(ii) By adding “this Part or” after “under”.
- 167(1)(b)(iii) By deleting “required” and substituting “ordered”.
- 167(3) In the definition of “officer”, in paragraph (a), by adding “company” before “secretary”.
- 172(3) In the Chinese text, by deleting “或” and substituting “及”.
- 174(1) By adding “company” before “secretary” (wherever appearing).

- 176(1) By deleting “Authority” and substituting “(Miscellaneous Provisions)”.
- 176(2) By deleting “Authority” and substituting “(Miscellaneous Provisions)”.
- 176(2) In the Chinese text, by deleting “或保留” and substituting “及保留”.
- 176(3)(b) By deleting “Authority” and substituting “(Miscellaneous Provisions)”.
- 176(5)(b) By deleting “that date” and substituting “the date on which the regulations are published in the Gazette”.
- Schedule 1 By deleting “& 36]” and substituting “, 36 & 162A]”.
- Schedule 1, section 1 By deleting paragraph (a) and substituting—
“(a) contributes to—
(i) improving production or distribution; or
(ii) promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit;”.
- Schedule 1 By adding—
“4. **Mergers**
(1) To the extent to which an agreement (either on its own or when taken together with another agreement) results in, or if carried out would result in, a merger, the first

conduct rule does not apply to the agreement.

(2) To the extent to which conduct (either on its own or when taken together with other conduct) results in, or if engaged in would result in, a merger, the second conduct rule does not apply to the conduct.

5. Agreements of lesser significance

(1) The first conduct rule does not apply to—

(a) an agreement between undertakings in any calendar year if the combined turnover of the undertakings for the turnover period does not exceed \$200,000,000;

(b) a concerted practice engaged in by undertakings in any calendar year if the combined turnover of the undertakings for the turnover period does not exceed \$200,000,000; or

(c) a decision of an association of undertakings in any calendar year if the turnover of the association for the turnover period does not exceed \$200,000,000.

(2) Subsection (1) does not apply to an agreement, a concerted practice, or a decision of an association of undertakings, that involves serious anti-competitive conduct.

(3) Subject to subsection (4), the turnover period of an undertaking is—

(a) if the undertaking has a financial year, the financial year of the undertaking that

ends in the preceding calendar year; or

- (b) if the undertaking does not have a financial year, the preceding calendar year.

(4) 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—

(i) the undertaking does not have a financial year that ends in the preceding calendar year; or

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

- (b) for an undertaking that does not have a financial year—

(i) the undertaking is not engaged in economic activity in the preceding calendar year; or

(ii) the period in which the undertaking is engaged in economic activity in the preceding calendar year is less than 12 months.

(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);

“turnover” (營業額)—

- (a) in relation to an undertaking that is not an association of undertakings, means the total gross revenues of the undertaking whether obtained in Hong Kong or outside Hong Kong; and
- (b) in relation to an association of undertakings, means the total gross revenues of all the members of the association whether obtained in Hong Kong or outside Hong Kong.

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.

(2) Subject to subsection (3), the turnover period of an undertaking is—

- (a) if the undertaking has a financial year, the financial year of the undertaking that ends in the preceding calendar year; or
- (b) if the undertaking does not have a financial year, the preceding calendar year.

(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—
 - (i) the undertaking does not have a financial year that ends in the

- preceding calendar year; or
- (ii) the financial year of the undertaking that ends in the preceding calendar year is less than 12 months; or
- (b) for an undertaking that does not have a financial year—
- (i) the undertaking is not engaged in economic activity in the preceding calendar year; or
- (ii) the period in which the undertaking is engaged in economic activity in the preceding calendar year is less than 12 months.

(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;

“turnover” (營業額) means the total gross revenues of an undertaking whether obtained in Hong Kong or outside Hong Kong.”.

Schedule 2,
section 1(a)

By deleting “or”.

Schedule 2,
section 1(b)

By deleting “61.” and substituting “61; or”.

- Schedule 2,
section 1
- By adding—
- “(c) accept a new commitment in substitution for such a commitment under section 61.”.
- Schedule 2,
section 4
- By deleting everything after “or variation” and substituting—
- “__
- (a) through the Internet or a similar electronic network; and
- (b) in any other manner the Commission considers appropriate.”.
- Schedule 2,
section 5
- By deleting paragraph (b) and substituting—
- “(b) publishing the notice—
- (i) through the Internet or a similar electronic network; and
- (ii) in any other manner the Commission considers appropriate,
- for the purpose of bringing the matter to which the notice relates to the attention of those the Commission considers likely to be affected by it.”.
- Schedule 2,
section 9
- By deleting everything after “withdrawal” and substituting—
- “__
- (a) through the Internet or a similar electronic network; and
- (b) in any other manner the Commission considers appropriate.”.
- Schedule 2,
section 10
- By deleting paragraph (b) and substituting—
- “(b) publishing the notice—
- (i) through the Internet or a similar electronic

- network; and
- (ii) in any other manner the Commission considers appropriate,
for the purpose of bringing the matter to which the notice relates to the attention of those the Commission considers likely to be affected by it.”.
- Schedule 2,
section
12(2)(b) By deleting “and”.
- Schedule 2,
section 12(2) By adding—
 “(ba) any other facts that the Commission considers to be relevant to the proposed release; and”.
- Schedule 2,
section 14 By deleting paragraph (a) and substituting—
 “(a) publish the release—
 (i) through the Internet or a similar electronic network; and
 (ii) in any other manner the Commission considers appropriate; and”.
- Schedule 2,
section 14(b) In the English text, by deleting “the person who made the commitment” and substituting “that person”.
- Schedule 2,
section 15 In the English text, by deleting “is” and substituting “must be”.
- Schedule 2,
section 15 By deleting paragraph (b) and substituting—
 “(b) publishing the notice—
 (i) through the Internet or a similar electronic network; and

- (ii) in any other manner the Commission considers appropriate,
for the purpose of bringing the matter to which the notice relates to the attention of those the Commission considers likely to be affected by it.”.
- Schedule 3 By deleting “, 110 & 113]” and substituting “& 110]”.
- Schedule 3, section 2(b) In the Chinese text, by deleting “須” and substituting “可”.
- Schedule 5, section 2(1) By adding “and not more than 16” after “5”.
- Schedule 5, section 5(1)(d) In the Chinese text, by deleting “或管理” and substituting “及管理”.
- Schedule 5, section 5(3) In the definition of “officer”, in paragraph (a), by adding “company” before “secretary”.
- Schedule 5, section 7(2) By adding “the remainder of” after “beyond”.
- Schedule 5, section 13(2) By deleting “For the purpose of determining the quorum, a” and substituting “A”.
- Schedule 5, section 18(d) By deleting “the merit of”.
- Schedule 5, section 27(2)(c) In the Chinese text, by deleting “及文件” and substituting “或文件”.

Schedule 5,
section 27

By adding—

“(4) Subsection (1) does not operate to entitle the Director of Audit to question the merits of the policy objectives of the Commission.”.

Schedule 5,
section 28(3)

By deleting “one” and substituting “a member of the Commission who is also a”.

Schedule 5

By adding—

“PART 7A

REGISTER AND DISCLOSURE OF INTERESTS

28A. **Register of interest**

(1) A member of the Commission, or a member of a committee established by the Commission, must disclose to the Commission any interest that the member has which is of a class or description determined by the Commission under subsection (2)—

- (a) in the case of a member of the Commission, on the member’s first appointment to the Commission;
- (b) in the case of a member of the committee who is not also a member of the Commission, on the member’s first appointment to the committee;
- (c) at the beginning of each calendar year after the member’s appointment;
- (d) on becoming aware of the existence of an interest not previously disclosed under this subsection; and

(*e*) after the occurrence of any change to an interest previously disclosed under this subsection.

(2) The Commission may, for the purposes of this section—

(*a*) determine the class or description of the interest required to be disclosed;

(*b*) determine the details of the interest required to be disclosed and the manner in which such interest is to be disclosed; and

(*c*) from time to time change any matter determined under paragraph (*a*) or (*b*).

(3) The Commission is to establish and maintain a register relating to any disclosure required to be made under subsection (1) (the “register”).

(4) If a person makes a disclosure as required by subsection (1), the Commission must cause the person’s name and the particulars of the disclosure to be recorded in the register, and if a further disclosure is made, the Commission must cause the particulars of the further disclosure to be recorded in the register.

(5) The Commission must make the register available for inspection by any person—

(*a*) at the offices of the Commission during ordinary business hours;

(*b*) through the Internet or a similar electronic network; and

(*c*) in any other manner the Commission considers appropriate.

28B. Disclosure of interests

- (1) If a member of the Commission has—
 - (a) a pecuniary interest, whether direct or indirect; or
 - (b) a personal interest greater than that which the member has as a member of the general public,

in any matter under discussion at a meeting of the Commission, the member must disclose the nature of the interest at the meeting.

(2) The following provisions apply for the purposes of a disclosure under subsection (1)—

- (a) the disclosure must be recorded in the minutes;
- (b) if the disclosure is made by the member presiding, the member must vacate the chair during the discussion;
- (c) the member (including one who has vacated the chair under paragraph (b)) must, if so required by the majority of the other members present, withdraw from the meeting during the discussion and must not in any case, except as otherwise determined by the majority of the other members present, vote on any resolution concerning the matter under the discussion or be counted for the purpose of establishing the existence of a quorum.

(3) When a matter is being dealt with by way of

the circulation of written resolutions under section 17 of this Schedule, and a member of the Commission has—

- (a) a pecuniary interest in the matter, whether direct or indirect; or
- (b) a personal interest in the matter greater than that which the member has as a member of the general public,

the member must disclose the nature of the interest by attaching to the resolutions being circulated a note recording the disclosure.

(4) If a member has made a disclosure under subsection (3), the member's signature (if any) is not to be counted for the purpose of section 17(1) of this Schedule unless the Chairperson directs otherwise.

(5) If the member making a disclosure in respect of a matter under subsection (3) is the Chairperson, section 17 of this Schedule ceases to apply to the matter.

(6) The validity of any proceeding of the Commission is not affected by the failure by a member of the Commission to comply with this section.

(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.”.

Schedule 5,
section 29(2)

By adding—

- “(ba) the power to vary or revoke a block exemption order under section 20;
- (bb) the power to issue an infringement notice under section 66;”.

- Schedule 5,
section 29(2) By adding—
 “(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;”.
- Schedule 5,
section 29(2) By adding—
 “(la) the power to appeal to the courts;”.
- Schedule 6 In the heading, by deleting “MAY” and substituting “MUST”.
- Schedule 6,
section 4 In the Chinese text, by deleting “某些特定事宜或某類” and substituting “特定事宜或特定類別”.
- Schedule 6,
section 6 By deleting “other parties” and substituting “the other party”.
- Schedule 7,
section 3(4) In the Chinese text, by deleting “自動” and substituting “自主”.
- Schedule 7,
section 6 In the heading, by deleting “to” and substituting “**that may**”.
- Schedule 7,
section 10(3) In the Chinese text, by deleting “屆會期” and substituting “會期”.
- Schedule 7,
section 10(5) In the Chinese text, by deleting “屆會期” and substituting “會期”.
- Schedule 7,
section
11(1)(a) In the English text, by deleting “carries” and substituting “has carried”.

Schedule 7,
section 12

By deleting subsection (1) and substituting—

“(1) Before making a decision on an application made under section 11 of this Schedule, the Commission must—

- (a) in order to bring the application to the attention of those the Commission considers likely to be affected by the decision, publish notice of the application—
 - (i) through the Internet or a similar electronic network; and
 - (ii) in any other manner the Commission considers appropriate; and
- (b) consider any representations about the application that are made to the Commission.”.

Schedule 7,
section 14

In the Chinese text, by deleting “採取任何行動” and substituting “提出任何訴訟”.

Schedule 7,
section 15(2)

By deleting everything before paragraph (a)(i) and substituting—

“(2) Before rescinding a decision under this section, the Commission must—

- (a) in order to bring the proposed rescission to the attention of those persons the Commission considers likely to be affected by it, publish notice of the proposed rescission—”.

- Schedule 7,
section 15
- By adding—
- “(2A) The notice referred to in subsection (2) must be published—
- (a) through the Internet or a similar electronic network; and
 - (b) in any other manner the Commission considers appropriate.”.
- Schedule 7,
section 15(6)
- In the Chinese text, by deleting “作何” and substituting “任何”.
- Schedule 7,
section 16
- By deleting subsection (3) and substituting—
- “(3) The Commission must make the register available for inspection by any person—
- (a) at the offices of the Commission during ordinary business hours;
 - (b) through the Internet or a similar electronic network; and
 - (c) in any other manner the Commission considers appropriate.”.
- Schedule 7,
section 17(4)
- By adding “the Legislative Council and” after “consult”.
- Schedule 7,
section 17
- By deleting subsection (5) and substituting—
- “(5) The Commission must make available copies of all guidelines issued under this section and of all amendments made to them—
- (a) at the offices of the Commission during ordinary business hours;
 - (b) through the Internet or a similar

after—

“Assistant Registrar, High Court”.”.

Schedule 8 By deleting section 7.

Schedule 8 By deleting Part 5.

Schedule 8, section 23 By deleting “115” and substituting “123”.

Schedule 8, Part 7 In the heading, by deleting “AUTHORITY” and substituting “(MISCELLANEOUS PROVISIONS)”.

Schedule 8 By deleting section 24 and substituting—

“24. **Interpretation**

(1) Section 2 of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) is amended, in the Chinese text, in the definition of “廣播投訴委員會”, by deleting “會。” and substituting “會 ;”.

(2) Section 2 is amended by adding—

““Commission” (競委會) means the Competition Commission established by section 128 of the Competition Ordinance (of 2010);”.”.

Schedule 8, section 34(2) By deleting “Broadcasting”.

Schedule 8 By adding—

“PART 10

AMENDMENTS TO COMMUNICATIONS AUTHORITY

ORDINANCE

39. **Functions of Authority**

Section 4 of the Communications Authority Ordinance (Cap. 616) is amended by adding—

“(1A) The Authority has all the functions conferred on it by or under Part 11 of the Competition Ordinance (of 2010).”.

- | | |
|--------------------------------|--|
| Schedule 9,
section 1 | In the Chinese text, in the definition of “原有《廣播條例》”, by deleting “章) 。” and substituting “章) ;”. |
| Schedule 9,
section 1 | By deleting the definition of “pre-amended Broadcasting Authority Ordinance”. |
| Schedule 9,
section 1 | By adding—
<p>““pre-amended Broadcasting (Miscellaneous Provisions) Ordinance” (原有《廣播(雜項條文)條例》) means the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) in force immediately before the commencement date;”.</p> |
| Schedule 9,
section 2 | By deleting “Authority” and substituting “(Miscellaneous Provisions)”. |
| Schedule 9,
section 3(2)(a) | In the Chinese text, by deleting “發生” (wherever appearing) and substituting “作出”. |
| Schedule 9,
section 3(8) | By deleting “Telecommunications Authority” (wherever appearing) and substituting “Communications Authority”. |

- Schedule 9,
section 3 By deleting subsection (9).
- Schedule 9,
section 4 In the heading, by deleting “**Authority**” and substituting
“**(Miscellaneous Provisions)**”.
- Schedule 9,
section 4(1) In the definition of “pre-amended Ordinance”, in paragraph (a), by
deleting “Authority” and substituting “(Miscellaneous Provisions)”.
- Schedule 9,
section 4(2)(a) In the Chinese text, by deleting “發生” (wherever appearing) and
substituting “作出”.
- Schedule 9,
section 4(2) In the Chinese text, by deleting “訂立” and substituting “制定”.
- Schedule 9,
section 4(3) In the Chinese text, by adding “繼續” before “適用”.
- Schedule 9,
section 4(3) In the Chinese text, by deleting “訂立” and substituting “制定”.