立法會
Legislative Council

LC Paper No. CB(1)1919/11-12

Ref: CB1/BC/12/09

Report of the Bills Committee on Competition Bill

Purpose

This paper reports on the deliberations of the Bills Committee on Competition Bill (the Bill).

Background

2. According to the Administration, the Government's competition policy is to enhance economic efficiency and the free flow of trade through promoting sustainable competition to bring benefits to both the business sector and consumers. The existing approach of discouraging anti-competitive conduct through voluntary compliance by the business community with administrative guidelines has not been very effective in addressing continued public concerns about possible cases of anti-competitive conduct in Hong Kong. Due to the lack of statutory power in mounting effective investigations into the complaints made to the Competition Policy Advisory Group (COMPAG)[1], the Government has been unable to determine whether certain alleged anti-competitive conduct has taken place. It is also not possible to impose appropriate sanctions for such conduct and deterrence of its recurrence, nor is there any mechanism for parties aggrieved by anti-competitive conduct to seek damages when a complaint is substantiated.

3. In June 2006 the Competition Policy Review Committee recommended the introduction of a new cross-sector competition law to enable the authorities

[1] The COMPAG chaired by the Financial Secretary was established in 1997 for examining, reviewing and advising on competition-related issues. In May 1998, the COMPAG promulgated the Statement on Competition Policy, which sets out the Government's approach to competition regulation and lays the basis for the existing regulatory regime. In September 2003, the COMPAG published guidelines aimed to define and tackle anti-competitive practices as well as to ensure consistent application of Hong Kong's competition policy across sectors.

to investigate such cases more effectively and to impose sanctions. Two consultation exercises were conducted in 2006 and 2008 to gauge the public's views on the need for Hong Kong to introduce a cross-sector competition law. According to the Administration, an overwhelming majority expressed general support for the law but the business sector had some concerns on the effect of the new law.

The Bill

4. The Competition Bill, which contains 12 parts and 9 schedules, was gazetted on 2 July 2010 and introduced into the Legislative Council (LegCo) on 14 July 2010.

5. The Bill seeks to prohibit and deter "undertakings" in all sectors from adopting anti-competitive conduct which has the object or effect of preventing, restricting or distorting competition in Hong Kong. It provides for general prohibitions in three major areas of anti-competitive conduct (described as the first conduct rule, the second conduct rule and the merger rule which are collectively known as the "competition rules" in the Bill).

6. The first conduct rule proposed in clause 6 of the Bill prohibits undertakings from making or giving effect to agreements or decisions or engaging in concerted practices that have as their object or effect the prevention, restriction or distortion of competition in Hong Kong. The second conduct rule under clause 21 of the Bill prohibits undertakings that have a substantial degree of market power in a market from engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong. The merger rule in Schedule 7 to the Bill prohibits mergers that have or are likely to have the effect of substantially lessening competition in Hong Kong. The Bill limits the scope of application of the merger rule to carrier licences issued under the Telecommunications Ordinance (Cap. 106).

7. The Bill provides for a judicial enforcement model through the establishment of the Competition Commission (the Commission) and the Competition Tribunal (the Tribunal). The Commission is tasked with the functions to investigate into competition-related complaints, and to bring public enforcement action before the Tribunal in respect of anti-competitive conduct either on receipt of complaints, on its own initiative, or on referral from the Government or a court. The Tribunal will be set up within the Judiciary as a superior court of record to hear and adjudicate on competition cases brought by the Commission, private actions as well as reviews of determination of the Commission.

The Bills Committee

8. At the House Committee meeting on 8 October 2010, a Bills Committee was formed to scrutinize the Bill. The membership list of the Bills Committee is in **Appendix I**.

9. Under the chairmanship of Hon Andrew LEUNG Kwan-yuen, the Bills Committee has held a total of 38 meetings and met with representatives of various organizations and individuals in five rounds of meetings to listen to their views on the Bill and the proposed amendments to the Bill. A list of organizations and individuals who have made representations to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

Key areas of concerns

10. During the year since October 2010 when the Bills Committee began its deliberations on the Bill, members considered the views of the business community, including chambers of commerce, trade associations and small and medium enterprises (SMEs), academics and professional bodies, and consumer organizations, and expressed a number of concerns over some of the provisions in the Bill. Members in general have expressed support for the introduction of a cross-sector competition law to tackle anti-competitive activities. Some members opine that safeguarding consumer benefit should be clearly specified as an object of the Bill. They have cautioned against making unjustifiable changes to the Bill compromising its effectiveness in combating anti-competitive activities. On the other hand, some members consider that a balance should be struck between the need to protect consumers' interests and the interests of the business sector. They have urged the Administration to provide greater certainty and clarity in the Bill to address the concerns of businesses especially SMEs about being caught by the law inadvertently and the potential high legal cost in compliance with the requirements of the competition law. The main concerns raised by these members include –

(a) the general prohibition against anti-competitive activities is difficult for SMEs to understand and comply with;

(b) the de minimis arrangements should be laid down in the law to give more certainty to SMEs;

(c) the payment requirement of infringement notice may place a significant burden on SMEs;

(d) the pecuniary penalty cap of 10% of global turnover for each year in which the contravention has occurred is too severe;

(e) large companies may use stand-alone private actions provided by the Bill to harass SMEs; and

(f) the application of the first and the second conduct rules to merger activities in the non-telecommunication sectors runs contrary to the stated policy that these merger activities themselves will not be regulated under the Bill.

11. To address members' concerns above, the Administration presented to the Bills Committee on 25 October 2011 a package of proposals to amend the Bill. In addition to these proposals, the Bills Committee also deliberated various aspects of the Bill including the formulation of the conduct rules, the sample guidelines on the conduct rules, the arrangements for the exemption of statutory bodies and certain agreements from the application of the Bill, the institutional framework comprising the Commission and the Tribunal, as well as enforcement matters.

12. The Bills Committee's deliberations are set out in the ensuing paragraphs in this report.

Safeguarding consumer benefit as an object of the Bill

13. Regarding the objects of the Bill, a member has requested that the phrase, i.e. "to enhance economic efficiency and the free flow of trade through promoting sustainable competition thereby bringing benefits to both the business sector and consumers" (the recommended phrase), should be included in the Bill to tally with the purpose of the legislation as stated in the 2008 public consultation document and be in line with competition laws in other jurisdictions including the United Kingdom (UK) and the Mainland. There are worries that if the object of economic efficiency (and hence consumer protection) is not stated in the Bill, the Tribunal would not consider this factor when hearing and adjudicating on competition cases.

14. The Administration has explained that the recommended phrase is a stated objective of the Government's competition policy and it is not necessary

to stipulate this pre-existing objective as one of the objects of the Bill. According to the Administration, enhancing consumer benefits is undoubtedly one of the intended outcomes of the Bill.

15. Some members have suggested that the objective of enhancing consumers' benefit should be stipulated in the Bill as a new function of the Commission so that the Commission would take this factor into account in its future operation. The Administration has advised that unlike the Office of Fair Trading in UK, which is tasked to implement the *Competition Act 1998*, the Commission does not have a statutory function in consumer protection.

16. Schedule 1 of the Bill provides the general exclusions from the conduct rules. A member has suggested that as an alternative to stating consumer protection as an object of the Bill, section 1 of the Schedule should be refined so that consumers' benefit would be featured as one of the criteria for exempting agreements enhancing overall economic efficiency.

17. Having considered members' views, the Administration has eventually agreed to add "while allowing consumers a fair share of the resulting benefit" to section 1(a) of Schedule 1 to the Bill.

18. The Bills Committee has noted that some deputations support an "anti-monopoly" law aimed at combating monopoly by large consortia rather than the current cross-sector Bill seeking to prohibit anti-competitive conduct of undertakings regardless of their size.

Formulation of the first conduct rule

19. Clause 6 of the Bill sets out the first conduct rule which prohibits undertakings from making or giving effect to agreements or decisions or engaging in concerted practices that have as their object or effect the prevention, restriction or distortion of competition in Hong Kong.

20. Some members consider that the Bill should only catch conduct which had an appreciable adverse effect on competition. Some members also consider that it would be difficult to assess the effect of the agreements having anti-competitive objects unless these agreements are carried out. Some members have requested the Administration to consider applying the first conduct rule to conduct having both "object and effect" of preventing, restricting or distorting competition in Hong Kong.

21. The Administration has stressed that conduct with an intention to lessen competition in Hong Kong should not be tolerated even if it is not implemented

successfully. Competition law in other major jurisdictions has also adopted a similar formulation so that anti-competitive agreements with either object or effect to affect competition would be prohibited.

22. The Administration has clarified that "object" referred to the objective purpose of an agreement considered in the economic context in which it is to be applied, and does not mean the subjective intention of the parties when entering into the agreement. As the Bill is modelled on overseas legislation adopting similar general prohibitions against agreement or conduct that has an "object or effect" to prevent, restrict or distort local competition, the Commission or the Tribunal could draw reference from the case law in European Union (EU), the United Kingdom (UK) and Singapore when dealing with competition cases in Hong Kong in future. Moving away from the current formulation of conduct rules would lead to the loss of application of a large pool of case law and jurisprudence, thereby creating uncertainties for the business sector in Hong Kong.

23. Some members and deputations have expressed the view that the Bill should make it clear that inference of an undertaking's object would be reached objectively and that the definition of "undertaking" in clause 2 of the Bill may be refined.

24. The Administration has advised that the proposed conduct rules in the Bill model on the corresponding provisions in the EU, the UK and Singapore. There is plenty of case law and a wealth of jurisprudence in these overseas jurisdictions which suggest that only conduct that has an appreciable adverse effect on competition would be prohibited, and how "undertaking" is interpreted for the purpose of competition law.

25. The Administration opines that with the introduction of the warning notice for alleged contravention of the first conduct rule for agreements not involving serious anti-competitive conduct (namely price-fixing, bid-rigging, output control, and market allocation which are defined in the Bill), the concerns over legal certainty in the application of the general prohibitions should have been addressed. Moreover, the future Commission would be required to issue guidelines to elaborate on the key elements of the general prohibitions to provide practical and detailed guidance on how the principle-based competition law would be interpreted and applied. Hence, the Administration considers it appropriate to retain the current formulation of the conduct rules in the Bill.

26. Some members have queried why the standard of "substantially lessening competition" under the merger rule is not also adopted for the conduct

rules. The Administration has advised that the merger rule and the conduct rules deal with different matters, and that if the competition provisions of the Bill were to be modelled on the merger provisions instead of on the corresponding competition provisions in the UK and the EU, the Tribunal might have difficulty in drawing reference from overseas case law and experience when hearing and adjudicating competition cases.

Differentiating between hardcore and non-hardcore anti-competitive activities

27. The Bill adopts a general prohibition approach in combating anti-competitive agreements and concerted practices between undertakings as well as decisions of an association of undertakings. Some members and many SMEs consider that SMEs might unwittingly breach the law because of the lack of certainty in this catch-all general prohibition. They have argued that the indiscriminate treatment of more serious anti-competitive activities, such as price-fixing, market allocation, output control and bid-rigging (the so-called "hardcore activities"), and less severe anti-competitive activities, such as restrictions on advertising, collective refusal to supply and the development of standardization agreements (the so-called "non-hardcore activities") in the Bill would be a huge burden for SMEs as inadvertent breach of a less serious nature might still attract a heavy fine. As non-hardcore activities are usually less well-defined and SMEs which have limited experience in dealing with the requirements of the competition law might need to incur additional costs to seek legal advice, some SMEs suggested that the law should completely exempt SMEs.

The Canadian model of enforcing competition law

28. Some members have asked the Administration to consider adopting a "two-track approach" similar to that of the Canadian competition law model by confining the imposition of heavier penalties on several specific categories of hard-core anti-competitive conduct and applying less stringent sanctions to other anti-competitive acts.

29. The Administration has advised that the *Competition Act* of Canada specifically defined categories of hard-core anti-competitive agreements which are subject to strict *per se* criminal liability. Prosecution of these criminal offences would be brought before the Canadian criminal courts. On the other hand, other non-hardcore anti-competitive agreements or conduct are regulated by general prohibitions and alleged contravention of these general provisions would be dealt with by the Canadian Competition Tribunal under a civil track. In the UK, some of the competition cases would be handled by the relevant competition authorities under the civil administrative model, while certain cases

involving cartel offences would be brought before a court of law for adjudication.

30. The Administration has considered that the general prohibition approach, which is the mainstream international practice also adopted in the EU, the UK and Singapore, is more suitable for Hong Kong, when compared with the dual track approach in the Canadian model. Moreover, since the Canadian dual track approach only started implementation in 2010, it is untested in terms of its effectiveness in tackling non-hardcore activities. In terms of checks and balances, the judicial enforcement model proposed under the Bill should be able to ensure sufficient checks and balances to the exercise of the statutory powers by the Commission and the Tribunal since the powers of investigation, bringing of proceedings and adjudication under the Bill are separated.

Hardcore anti-competitive activities

31. Nevertheless, the Administration recognises that a competition law is something new in Hong Kong. The business community, in particular SMEs, would need time to familiarise themselves with the new requirements. While the market needs a swift and effective response to hardcore anti-competitive activities because they almost always have an adverse impact on competition, the Administration accepts a lighter enforcement approach in respect of non-hardcore activities.

32. The Administration has therefore proposed to specify four types of hardcore activities, namely price-fixing, bid-rigging, market allocation and output control, as "serious anti-competitive conduct" in clause 2 of the Bill. These activities are widely recognised in overseas jurisdictions as anti-competitive activities that will always have an adverse impact on competition. The Administration has assured members that the Commission will be provided with the full range of existing enforcement options in the Bill to deal with these hardcore activities. The Commission may exercise its discretion to accept commitments, issue infringement notices or institute proceedings in the Tribunal.

<u>Adopting "warning notice" mechanism for non-hardcore anti-competitive activities</u>

33. For other activities covered by the first conduct rule (that is the non-hardcore activities) such as restrictions on advertising, collective refusal to supply and the development of standardization agreements, the Administration considers that there is no hard and fast rule as to whether they may or may not give rise to competition concerns. The Commission would need to conduct a

competition analysis based on the circumstances and facts of each case. For these activities, the Administration has proposed that a new instrument of warning notice should be introduced.

34. Members have noted that the proposed warning notice seeks to address concerns of the business sector, particularly SMEs, over clarity of the general prohibition and the risk of falling foul of the law unknowingly. Under the new "warning notice" mechanism, the Commission is required to warn the infringing parties before instituting any legal proceedings in respect of non-hardcore anti-competitive activities.

35. The Administration has advised that the notice will enable the Commission to take swift action to halt non-hardcore activities. The notice provides undertakings a chance to correct their malpractices before other enforcement action is taken and limits their exposure to sanctions to the period starting from the commencement of the period prescribed in the warning notice. The Administration will propose a Committee Stage amendment (CSA) to add a new clause 80A for providing the warning notice mechanism.

Decision to issue a warning notice

36. Some members opine that the Commission's decision to issue a warning notice should be made a reviewable determination by the Tribunal under clause 81 on the ground that a person wrongfully issued a warning notice should be able to challenge the notice at the Tribunal.

37. The Administration and some members consider that the purpose of introducing the warning notice is to simply provide information to an undertaking. If the notice is made a reviewable determination, application for a review of the issuing decision may then be instituted giving rise to unnecessary legal actions and defeat the purpose of introducing the notice. Also, the non-compliance of a warning notice has no legal consequence *per se*. Enforcement action would only start if the contravention continues or is repeated after the warning period. In any event, if the undertaking wants to redress a procedural impropriety, the Commission's decision of issuing a warning notice is subject to judicial review.

<u>Providing exclusions from the conduct rules under the de minimis arrangements</u>

38. Some members and some sectors of the business community have suggested a complete exemption for SMEs from the Bill, arguing that because of their small size, SMEs should have limited influence on the market.

39. The Administration has explained that a blanket exemption for all SMEs is not acceptable because SMEs acting collectively could cause significant impact on competition. Small companies may also engage in hardcore anti-competitive activities (such as price-fixing and bid-rigging) which are harmful to end consumers and should be prohibited by law.

40. The Bills Committee has noted that it is a common practice in other jurisdictions with competition law to provide de minimis arrangements so that agreements or conduct below certain thresholds, usually expressed in combined market share or turnover of the parties involved, are generally not considered to have an appreciable impact on competition and not subject to enforcement action by the competition authorities. Members have asked the Administration to set out details of the de minimis arrangements in the Bill to provide greater certainty to SMEs.

Threshold for exclusion from the first conduct rule

41. In response to members' concerns, the Administration has drawn reference from overseas practices and proposes to provide the following de minimis framework in Schedule 1 to the Bill in the form of an exclusion from the first conduct rule –

(a) all agreements, concerted practices and decisions between undertakings with a combined turnover not exceeding HK$100 million in the preceding financial year (or the preceding calendar year if the undertakings do not have a financial year) will be excluded from the application of the first conduct rule; and

(b) the exclusion does not apply to the four types of hardcore anti-competitive activities (i.e. price-fixing, bid-rigging, market allocation and output control) since these activities almost always have an appreciable adverse effect on competition.

42. The Administration has advised that turnover is adopted as the threshold because it can be more easily determined by concerned undertakings market share which requires a definition of the relevant market for each and every agreement.

43. Noting members' and deputations' concern and suggestion, the Administration proposes to further adjust the threshold to HK$200 million which is close to the "small agreement" threshold of GBP 20 million adopted in the UK's Competition Act. This adjustment will be incorporated in the Administration's CSA of the proposed new section 5 in Schedule 1 to the Bill.

Calculation of turnover

44. In response to members' enquiry about how to work out the annual turnover of an undertaking under the newly proposed section 5 of Schedule 1, the Administration has clarified that an agreement between undertakings will be excluded from the application of the first conduct rule in any calendar year if the combined turnover of the undertakings in the year preceding that calendar year does not exceed HK$200 million. In relation to an undertaking, turnover means the total gross revenues of the undertaking whether obtained in Hong Kong or outside Hong Kong. "Year" in this provision means the financial year of an undertaking, and if the undertaking does not have a financial year, "year" then means a calendar year. This formulation shall cover all undertakings that have been established for more than one year and have a financial year of 12 months ended in the preceding calendar year.

45. Members also consider it necessary to clarify the turnover calculation for newly established undertakings. To address members' concern, the Administration has proposed that the turnover of newly established undertakings (e.g. those established in the current calendar year or those without a financial year of 12 months ended in the preceding calendar year) should be specified by way of subsidiary legislation to be made by the Secretary for Commerce and Economic Development. Similar amendments would also be made for the calculation of turnover of an undertaking for the de minimis arrangements under the second conduct rule.

Threshold for exclusion from the second conduct rule (clause 21)

46. Clause 21 of the Bill prohibits undertakings from abusing their substantial degree of market power in a market by engaging in anti-competitive conduct.

47. The Administration has also proposed to set out de minimis arrangements in the Bill, using the average business turnover of SMEs in Hong Kong for the period between 2005 and 2009 of HK$11 million as the threshold. Conduct of an undertaking the turnover of which does not exceed HK$11 million will be excluded from the application of the second conduct rule. The rationale is that a smaller-than-average-sized SME is unlikely to have a substantial degree of market power in a market and its conduct would unlikely constitute an abuse of market power causing an appreciable effect on competition. Although it is possible that a smaller-than-average-sized SME possesses substantial market power in a narrow market and abuses such power against other smaller companies in the same market, such cases would be rare

and their impact on Hong Kong's economy limited.

48. Some members opine that the proposed threshold of HK$11 million is too low. Some deputations have suggested that the turnover threshold for the second conduct rule should be on par with the listing requirements for listing on the Main Board of the Hong Kong Exchange (i.e. HK$500 million). There have also been suggestions that different thresholds should be adopted for different sectors taking account of their different market circumstances. Some members have suggested excluding "micro companies" from the calculation of the turnover threshold since these companies would very unlikely possess any market power, and their inclusion in the calculation of the average turnover of SMEs would distort the resultant threshold.

49. Regarding the suggestion on adopting the listing requirements as the threshold, the Administration does not consider it acceptable since it would have the effect of excluding the vast majority of, or even all, undertakings in a market and severely affect the overall effectiveness of the Bill. On the suggestion of sectoral thresholds, the Administration considers that the process of defining all sectors of businesses in Hong Kong in the law and determining the appropriate threshold for each of them would be arbitrary, time consuming and controversial. It would cause more confusion than provide certainty to the business sector.

50. Taking account of members' and deputations' concerns and the fact that a turnover above HK$11 million does not presume a substantial degree of market power, the Administration has revisited the turnover threshold. The Administration remains of the view that any adjustment to the threshold has to be justified based on objective criteria and must not undermine the overall effectiveness of the competition law in tackling abuse of market power. Taking account of the latest statistics from the Census and Statistics Department (C&SD), the Administration has proposed increasing the turnover threshold for conduct of lesser significance under the second conduct rule to HK$40 million based on the following grounds –

(a) the figure represents the average turnover of SMEs in Hong Kong exclusive of those with five or less employees during the period from 2006 to 2010. Companies with five or less employees have been excluded to take on board members' and deputations' suggestion that very small companies should be excluded from the turnover calculation;

(b) undertakings with turnover below HK$40 million would unlikely have a substantial degree of market power anyway, unless the concerned market is very small or narrowly defined; and

(c) with the proposed threshold of HK$40 million, nearly 95% of all SMEs would be excluded from the application of the second conduct rule (vis-à-vis some 86% under the original proposed threshold of HK$11 million). This should give more certainty to SMEs.

51. The Administration will propose amendment to the proposed new section 6 of Schedule 1 to the Bill to increase the turnover threshold to HK$40 million.

52. The Administration has accepted members' suggestion to undertake to review the turnover threshold from time to time having regard to updated statistics provided by C&SD in the speech of the Secretary for Commerce and Economic Development for the resumption of the Second Reading debate.

Definition of market power in the second conduct rule

The concept of abuse of market power

53. Some members opine that the Bill should take out the concept of "abuse of market power" from clause 21 because, as evidenced by experience overseas, particularly in the EU, there are difficulties in understanding what constituted abuse.

54. The Administration has explained that since competition law is principle-based and the Bill adopts the general prohibition approach, it is impossible to list out in the Bill all kinds of conduct that would be considered as anti-competitive. The concept of "abuse" of market power has been adopted by overseas competition jurisdictions for many years and is the crux of the second conduct rule under the Bill. The Bill would not be able to tackle anti-competitive conduct of an undertaking with a substantial degree of market power if the "abuse" concept is removed from the second conduct rule.

Market share threshold for defining market power

55. Some members have proposed to adopt "dominant position" which is more widely adopted in overseas jurisdictions instead of the current test of "substantial degree of market power" in the formulation of the second conduct rule.

56. The Administration has explained that to constitute "dominant position", overseas jurisprudence suggested that the undertaking should possess a market

share of 50%. However, in a small economy in Hong Kong, the conduct of a firm with a significant market share, albeit short of the 50% presumption for "dominance", could have a major effect on competition. The Administration therefore considers the appropriate threshold for Hong Kong should be "substantial degree of market power". Adopting a threshold as high as "dominance" would affect the effectiveness of the Bill in addressing public concerns over anti-competitive conduct of some oligopolies in Hong Kong.

57. Some members and deputations have suggested that if the threshold of "substantial degree of market power" is to be adopted, the Administration should consider spelling out in law a minimum market share percentage below which an undertaking would unlikely possess a substantial degree of market power in order to provide more certainty.

58. The Administration has advised that insofar as the market share percentage threshold is concerned, it was proposed in the Administration's public consultation document *Detailed Proposals for a Competition Law – A Public Consultation Paper* issued in May 2008 that the market share percentage threshold for "substantial degree of market power" should be about 40%. As regards the suggestion of specifying a "minimum" market share threshold, the Administration notes that jurisdictions adopting "dominance" as their market power test consider that undertakings with market share percentages less than 35% to 40% would unlikely be dominant, which means a margin of 10% to 15% between the threshold for presumed dominance and the "minimum" market share threshold. Taking account of international practices, and the fact that the Administration has adopted a lower threshold of "a substantial degree of market power" than the "dominance" test for the second conduct rule, the Administration has proposed adopting a "minimum" market threshold of 25%, although a substantial degree of market power could still be established if other relevant factors provided strong evidence of such market power.

59. The Administration remains of the view that the minimum market share threshold should not be specified in the Bill since it would limit the flexibility of the Commission to enforce the second conduct rule amidst changing market circumstances and different market structures of different sectors. It has stressed that the international best practice is to set out the market share thresholds and other factors of assessing market power in non-statutory guidelines. However, noting members' and deputations' concern, as an alternative, the Administration has proposed stating this minimum market share threshold of 25% in the Secretary for Commerce and Economic Development's speech for the resumption of the second reading debate.

Factors for determining "substantial degree of market power"

60. Members have suggested that other factors apart from market share percentage might need to be taken into account in assessing market power of an undertaking, and that consideration should also be given to the specific conditions of different markets. Taking account of overseas experience and members' suggestions, the Administration proposes to amend clause 21 of the Bill, by adding a new sub-clause to set out the factors that may be taken into consideration for determining whether an undertaking has a "substantial degree of market power".

Guidelines on conduct rules (clause 35)

61. Under clause 35(1)(a) the Bill, the Commission is required to issue guidelines indicating the manner in which it expects to interpret and give effect to the conduct rules.

62. The Bills Committee has deliberated on the sample Guidelines on the First Conduct Rule, the Second Conduct Rule and Market Definition drawn up by the Administration.

63. Some members consider that the Guidelines are general in nature and are not clear enough to address the concerns of SMEs in specific trades. The Administration has assured members that the Commission would consult relevant stakeholders and prepare the actual guidelines with more details and illustrative examples. In response to the request of some members to make the guidelines on the proposed conduct rules subsidiary legislation subject to scrutiny of the LegCo, the Administration has expressed disagreement emphasizing the importance to allow flexibility for the Commission to issue and amend the guidelines as and when necessary in order to respond swiftly to the rapid changes in the market, and that it is in line with practices in overseas jurisdictions.

64. The Administration has agreed to members' request to introduce amendments to clause 35 to clarify the legal status of the guidelines that they are not subsidiary legislation and to specify that the Commission must consult the LegCo when drawing up the guidelines.

65. The Administration has also agreed to members' request to introduce amendments to clause 35(5) to ensure that the Commission would make use of the latest technology available, in particular the Internet, to publish the electronic copy of all guidelines issued under clause 35 and of all amendments made to them.

Removing payment requirement of infringement notice

66. The Bills Committee has noted that the Bill provides for a two-tier commitment mechanism under which the Commission will be empowered to –

(i) accept commitments from a person to take or refrain from taking certain action to address the Commission's concerns about a possible contravention of a competition rule; and

(ii) after its investigation and before bringing proceedings to the Tribunal, issue an infringement notice bearing a sum of payment of up to HK$10 million to a person allegedly contravening or having contravened the conduct rule.

67. The Administration has advised that the infringement notice is to enable the Commission to resolve cases and apply a minimum "punishment" on infringing parties without resorting to the Tribunal. This is to take into account that hardcore activities can have a different degree of effect on competition and infringement notices could be used to address those that constitute less severe contravention.

68. Some members and many in the business sector consider the Commission's power to ask an undertaking to pay a sum not exceeding HK$10 million to the Government under the infringement notice an unreasonable burden on SMEs and suggested the removal of this power from the Bill. Moreover, they have argued that the amount would be too low to act as a real deterrent for big undertakings. While acceptance of the notice is not compulsory, SMEs would be 'forced' to accept the notice and settle with the Commission as they would not have the resources to fight for themselves in the Tribunal. They consider that if a contravention does not have a significant effect on the market, a payment should not be demanded. On the other hand, if a serious contravention is involved, they prefer the Commission bringing proceedings in the Tribunal.

69. The Administration opines that if the power to impose a payment requirement under an infringement notice is removed, it would reduce the options available to the Commission but the infringement notice could still serve the purposes of halting anti-competitive activities. This notwithstanding, in the absence of a payment requirement, undertakings, in particular SMEs, might be more willing to settle with the Commission through the acceptance of the infringement notice. In cases involving hardcore activities that constitute more severe contravention, the option of applying more stringent measures (such as legal proceedings) will still be available at the discretion of the

Commission.

70. In addressing SMEs' concerns, the Administration has proposed to amend clause 66(3) to remove the payment requirement of a sum not exceeding HK$10 million.

Revising the pecuniary penalty (clause 91)

71. Clauses 90 and 91 provide that the Tribunal may, on the application of the Commission, impose a pecuniary penalty on a person who has contravened or been involved in a contravention of a competition rule.

72. Some members and the business community have criticized the original proposed cap on pecuniary penalty in clause 91, i.e. 10 % of the global turnover for each year in which the contravention has continued, as being disproportionately severe when compared with that in the EU, the UK and Singapore. Some members suggested making reference to the Singaporean approach to set a cap of 10% of local turnover for a maximum of three years. Some members went further to suggest a cap at 10% of one year's turnover of the concerned products or services (i.e. products or services to which a contravention relates) in Hong Kong. Some members are concerned that the heavy-handed approach might drive foreign investment away from Hong Kong.

73. The Administration has explained that the 10% cap in the Bill is introduced to provide certainty on the maximum pecuniary penalty and at the same time adequate sanctions to deter undertakings from engaging in prohibited anti-competitive activities. However, in order to strike a balance between maintaining a sufficient level of deterrence and keeping the Administration's competitive edge against competing economies in the region, the Administration has proposed to introduce amendments by amending clause 91(3) and (4) to provide a pecuniary cap of 10% of the local turnover for each year of infringement, up to a maximum of three years. If the infringement lasts for more than three years, the three years of infringement with the highest turnover would be chosen.

74. As regards the proposal by the business community of limiting the turnover to relevant products or services to which a contravention relates, the Administration considers it not acceptable. In other competition jurisdictions, the turnover of relevant products or services is usually taken as the "starting point", in a way similar to a minimum level, for penalty determination and would be adjusted to take account of the duration and seriousness of the infringement, subject to a prescribed cap on maximum penalty. Setting the cap on penalty at the lowest end of the spectrum will significantly reduce the

deterrent effect.

Removing stand-alone right of private action (in Part 7)

75. Part 7 of the Bill provides for private actions to be brought by persons who have suffered loss or damage as a result of a contravention of a conduct rule. Such private actions could either follow on from a determination of a contravention by the court (clauses 108 to 110), or could be "stand-alone" actions seeking a judgment on particular conduct and remedies (clauses 111 to 113).

76. Some members and deputations including trade associations of SMEs are concerned that large companies could make use of the stand-alone right of private action to harass SMEs. They are worried that larger companies, which have more resources, could resort to or threaten litigation as a means to drive out or affect the business of smaller competitors. Even if the court moves quickly to dismiss the claim as baseless, SMEs would still have to deploy resources in responding to the litigation and face significant costs. Despite the Administration's original intention of providing the stand-alone right as an alternative "self-help" option for aggrieved parties, SMEs considered that in practice, the legal costs involved would discourage them from invoking such rights.

77. The Administration has pointed out that experience in other jurisdictions does not substantiate the worries of SMEs. Overseas experience shows that large companies are usually the defendants in privately instigated competition litigation. Nevertheless, to reduce the anxiety and concerns of SMEs, the Administration considers that a gradual approach may be adopted under the circumstances. At the initial stage, enforcement will be carried out by the Commission, supplemented by the follow-on right of action for determined contraventions. As the business community acquires more experience with the new competition regime, a stand-alone right of action might be introduced. The Administration has proposed to introduce amendments to take out the relevant provisions (clauses 111 to 114) on the stand-alone right of private action. The Administration will review the need to introduce the stand-alone right of private action in a few years' time.

Regulation of mergers (Schedule 7)

78. In addition to the conduct rules, Schedule 7 to the Bill provides for regulation of mergers which have, or are likely to have the effect of substantially lessening competition in Hong Kong (the merger rule), but the merger control is confined to carrier licenses in the telecommunications sector.

79. Some members and the business community are concerned that while the application of the merger rule in Schedule 7 to the Bill has been limited to carrier licences, the first and the second conduct rules of the Bill as currently drafted could potentially catch merger activities. This would be contrary to the Government's stated position. They have requested the Government to clarify its stance and carve out merger activities from the application of the two conduct rules.

80. The Administration agrees that the first and the second conduct rules can apply to merger activities since a merger is essentially an agreement between undertakings and an undertaking having a substantial degree of market power may also engage in a merger. To give effect to the Administration's stated intention of not introducing a cross-sector merger regulation at this stage, the Administration has proposed to add a new section 4 in Schedule 1 to exclude mergers from the application of the first and the second conduct rules.

81. Regarding the need to regulate mergers other than those involving telecommunications carrier licensees, the Administration has indicated that as it builds up more experience and expertise under the new competition regime, it would be in a better position to review the effectiveness of the law and assess whether cross-sector merger provisions are suitable for and needed in Hong Kong. The merger rule in Schedule 7 to the Bill as presently drafted could be readily adapted for the cross-sector regulation.

Exemption arrangements for statutory bodies (clauses 3 to 5)

82. Clauses 3 to 5 provide for the exemption arrangements for statutory bodies, specified persons and persons engaged in specified activities.

83. The Administration considers that activities of many statutory bodies, as defined in clause 2, are non-economic and regulatory in nature or involve provision of essential public services. Overseas case law suggests that entities with no economic activities and economic activities of the above-mentioned nature are usually excluded from the application of the competition law. The proposed exemption arrangement for statutory bodies is to ensure that efficient implementation of public policies as well as measures which are required to respond swiftly to the needs of the community would not be affected by the introduction of the competition law in Hong Kong. Thus, under clause 3(1) of the Bill, the Administration has proposed not to apply those parts of the Bill relating to competition rules (Part 2 and Schedule 7) and enforcement (Parts 4 and 6) to statutory bodies.

84. On this basis, the Administration has proposed that 575 statutory bodies should be exempted in their entirety. Among them, 415 do not engage in economic activities or have insignificant amount of economic activities. Most of them are advisory, regulatory, adjudicative/quasi-judicial/appellate or administrative/governing bodies. The remaining 160 are statutory bodies engaging in economic activities that are directly related to the provision of essential public services or the implementation of Government policy in such areas as education, healthcare, social welfare, public housing and trade promotion. According to the Administration's proposal, six statutory bodies should not be exempted.

Definition of statutory bodies

85. Some members have pointed out that it is inappropriate to classify Hong Kong's courts as statutory bodies for the purpose of the Bill, and instead, the Bill should expressly state that it would not apply to Hong Kong's courts. The Administration has advised that the classification is in conformity with the constitutional requirement under the Basic Law and that the Judiciary has no objection to this arrangement. The Administration therefore does not suggest amending the definition of "statutory body" to exclude courts from the definition.

Applying the same exemption criterion to statutory bodies and non-statutory bodies

86. Some members have also suggested that the criterion set out in clause 31 for granting exemption on public policy grounds (i.e. exceptional and compelling reasons of public policy) should also apply and be incorporated into clause 5(1)(b) as a criterion for the Chief Executive (CE) in Council in exercising the power to exempt a non-statutory body from the Bill.

87. The Administration has advised that unlike statutory bodies where their services or activities are usually regulated by the ordinances by or under which they are established or constituted, the types and functions of non-statutory bodies as well as the nature of their activities could vary widely. As it would not be practicable to provide a common set of general criteria in the provision for determining exemption, in particular given the vast number of non-statutory bodies in Hong Kong, the Administration considers that clause 5(1)(b) as currently drafted provides the necessary flexibility for catering for unforeseen circumstances under which non-statutory bodies may warrant exemption.

Concerns about broad exemption of statutory bodies

88. Some members have expressed concern about exempting nearly all statutory bodies from the Bill, and in particular, the proposal to exempt the Hong Kong Trade Development Council (TDC). They consider it undesirable to exempt TDC, and are not convinced by the Administration's explanation given that other statutory bodies such as the Ocean Park, which similarly help implement Government policies, would not be exempted. Some members opine that while TDC's conduct relating to the discharge of its statutory functions could be exempted, its profit-making economic activities should be subject to regulation of the Bill. Such a broad exemption of statutory bodies is also unfair to the private sector, which would be regulated and hence would have to incur significant costs for complying with the enacted Competition Ordinance.

89. Other members, however, find the proposed list of exempted bodies agreeable, and have expressed support for exempting TDC from the Bill in recognition of its important role and contribution in promoting trade development. Some members consider that the list of exempted bodies could be reviewed after implementation of the enacted Competition Ordinance for a certain period.

90. The Administration has advised that the majority of statutory bodies in Hong Kong does not engage in economic activities or is engaged in economic activities which have insignificant effect on the market. For most other statutory bodies engaging in economic activities, the economic activities concerned are directly related to the provision of an essential public service or the implementation of public policy.

Views on exemption of the Hong Kong Trade Development Council

91. The majority of deputations invited by the Bills Committee to give views on the proposed exemption arrangements for statutory bodies has indicated support for the exemption of most statutory bodies in particular the TDC from the Bill. Members have noted the view of these deputations that if the TDC is to be made subject to the Bill, its performance of the role of promoting trade for Hong Kong and providing essential non-profit making trade services to SMEs might be hampered. Members have also noted the opposition to the proposed broad exemption of statutory bodies expressed by a few of the deputations on the ground that it would create an uneven playing field between the Government and the private sector. These deputations opine that the TDC has already been competing unfairly with private exhibition organizers.

92. The Administration has advised that the exemption for TDC from the

application of the Bill will help eliminate any uncertainties as to whether certain activities (such as organizing loss making trade fairs), which form part of the TDC's core statutory functions, might be alleged as anti-competitive, and thus ensure its uninterrupted support to local industries and SMEs. As with the other exempted statutory bodies, TDC would be requested to adhere to the competition principles despite the exemption, and to rectify any of its anti-competitive behavior in case it is found in breach of the principles concerned.

93. Hon Albert HO has indicated that he will move a CSA to add a sunset clause in order that clauses 3 to 5 on exemption of statutory bodies would cease to have effect three years after the coming into operation of these clauses. Hon Ronny TONG has indicated that he will move CSAs to delete clauses 3 to 5 and the definition of statutory body in clause 2. Hon Regina IP has also indicated that she may move CSAs on exemption of statutory bodies.

Exemption of vertical agreements

94. Under the current exemption mechanism, vertical agreements are not exempted from the regulation of the Bill. A vertical agreement is an agreement made by two or more undertakings, each operating (for the purposes of the agreement) at a different level of the production or distribution chain. Some members opine that many of the sales and distribution arrangements entered into by SMEs are vertical agreements which could enhance overall economic efficiency. They have requested that exemption be granted to all vertical agreements.

95. The Administration has pointed out that a vertical agreement might be used to disguise an agreement between direct competitors to limit competition between them. Carving out vertical agreements entirely might undermine the ability of the competition authorities to regulate these agreements effectively.

96. The Administration finds it more prudent for the Commission to consider issuing block exemption order to exempt certain types of vertical agreements having regard to the circumstances of Hong Kong after enactment of the Bill. The Administration sees merits in adopting this approach, which is same as that in the EU and the UK, at the infancy stage of implementing the Bill in Hong Kong, in order to ensure the most effective regulation of all potentially anti-competitive agreements.

Institutional framework

97. The Bills Committee has noted that as provided in the Bill, the

Commission will be an independent statutory body established to investigate and bring proceedings before the Tribunal in respect of anti-competitive conduct either on receipt of complaints, on its own initiative, or on referral from the Government or a court. Other functions of the Commission include promoting public understanding of the competition law, advising the Government on competition matters and deciding upon the application for decisions on exemptions from the application of the competition law, etc.

98. The Tribunal will be established within the Judiciary as a superior court of record to hear and adjudicate competition cases brought by the Commission, private actions as well as reviews of determination of the Commission. The Tribunal will be empowered to apply a full range of remedies. Decisions of the Tribunal are reviewable on appeals to the Court of Appeal (CA). Every judge of the Court of First Instance (CFI) will, by virtue of his or her appointment as CFI Judge, be a member of the Tribunal. The CE will, on the recommendations of the Judicial Officers Recommendation Commission, appoint one of the members of the Tribunal to be the President of the Tribunal. The President may appoint one or more members of the Tribunal to hear and determine an application made to the Tribunal. The Tribunal may appoint assessors to assist in proceedings.

Powers and composition of the Competition Commission (in Schedule 5)

99. Under section 2 of Schedule 5 to the Bill, the Commission is to consist of not less than 5 members appointed by the CE.

100. Some members have relayed the concerns of SMEs about the concentration of too much power in the Commission, which would be playing the roles of drawing up guidelines on interpretation of contravention of conduct rules, investigation and prosecution.

101. The Administration has advised that the Bill now proposes a judicial enforcement model by setting up the Tribunal to take up the adjudication function to avoid concentration of too much power in the Commission. Before exercising its investigative powers, the Commission must have reasonable cause to suspect that a contravention of any of the competition rules has taken place, is taking place or is about to take place. The Administration has also pointed out that at present, there is difficulty in mounting effective investigations into the complaints made to the COMPAG. The Bill seeks to establish a credible and impartial institutional framework which allows for effective and efficient enforcement of the competition law.

Expertise and experience of Commission members

102. Some members have expressed concern about the lack of competition expertise in the Commission, while some other members opine that Commission should include representatives from the business sector (or SMEs) and consumers.

103. The Administration has responded that in considering the appointment of a person as a member of the Commission, the CE might have regard to that person's expertise or experience in industry, commerce, economics, law, SMEs or public policy. It is therefore possible that a person possessing expertise or experience in any of the above areas would be considered for appointment to the Commission. The present formulation has struck a good balance between reflecting the policy intention as well as the need for sufficient flexibility under the appointment mechanism.

Upper limit on the number of Commission members

104. Members have suggested that a cap on the number of Commission members should be spelt out in the Bill to enhance certainty of the likely scale of operation of the Commission. Some have expressed concern that the CE might, at his discretion, appoint additional members to the Commission if the existing members do not share the same opinion with him.

105. Drawing reference from the cap in Singapore's *Competition Act* in respect of their Competition Commission (a maximum of 16 members) and the ceilings for other statutory bodies in Hong Kong with varying size and functions, the Administration has proposed that the total number of Commission members should be capped at 16.

Delegable functions of the Commission (section 29 of Schedule 5)

106. The Bills Committee has noted that section 29(2) of Schedule 5 provides a list of non-delegable functions which relate to the core functions of the Commission that carry substantial and read-across implications, such as bringing proceedings before the Tribunal, the issue of block exemption orders, or the duty to prepare guidelines.

107. Some members have requested the Administration to review the powers and functions of the Commission that can be delegated under section 29 of Schedule 5.

108. On review, the Administration has proposed that the following functions

of the Commission should also be included as non-delegable –

(a) the power to vary or revoke a block exemption order (clause 20);

(b) the power to issue an infringement notice (clause 66);

(c) the power to appeal to courts (clause 153); and

(d) the duty to submit an annual report and the audited accounts to the CE for tabling at the LegCo (section 26 of Schedule 5).

Rules regarding register and disclosure of interest (new sections 28A and 28B of Schedule 5)

109. To address members' concerns over the Commission's rules in respect of conflict of interest, the Administration has proposed that a new section 28A be added to Schedule 5 to the Bill to provide for a register of interests of members of the Commission or committees of the Commission, drawing reference from section 38 of the West Kowloon Cultural District Authority Ordinance (Cap. 601) and a new section 28B similar to clause 13 of the Communications Authority Bill be added to Schedule 5 to regulate disclosure of interests at a meeting by members of the Commission or committees of the Commission.

Complaints handling and investigation by the Commission

110. Part 3 (clauses 37 to 58) of the Bill sets out the powers and procedures of the Commission in relation to the investigation of alleged contravention of the competition rules and creates offences in relation to investigations. Non-compliance with the Commission's investigative power in the absence of reasonable excuse will be subject to criminal penalties.

Guidelines regarding complaints (clause 38)

111. Under clause 38 of the Bill, the Commission must issue guidelines indicating the manner and form in which complaints are to be made.

112. While some members opine that the above guidelines could facilitate complaint-handling, some other members consider it undesirable to issue such guidelines, lest complaints not made in the specified format would not be handled.

113. The Administration has explained that the guidelines are not meant to be mandatory requirements for compliance, but are aimed at indicating, for the

complainants' reference, the types and details of information that the Commission could base on in considering whether an investigation should be initiated on receipt of a complaint.

Transparency of the investigation initiated by the Commission (clause 39)

114. Some members have asked whether the Commission would follow the Ombudsman's practice in making known its intention and reasons of initiating an investigation of its own volition into any alleged contravention of a competition rule (clause 39).

115. The Administration has explained that the Commission would need to strike a balance between transparency of its work and the need to safeguard confidentiality of an investigation, having regard to the interests of the undertakings under investigation and the risks of subjecting the evidence to destruction or interference.

116. The Administration has further advised that the Commission and the Ombudsman might not be directly comparable, as the latter handled administrative complaints relating to Government departments or public bodies which would be obliged to provide the information on request. However, the Commission would need more enforcement powers such as entry of premises for search on warrant to ensure effective investigation into suspected anti-competitive conduct of undertakings in all sectors.

Self-incrimination (clause 45)

117. Members have noted that in the current wording of clause 45(2) on self-incrimination, if the person who provided the information/answers wishes to use the evidence he gave for, say, mitigation purposes, he may not be able to do so. Members suggested that clause 45(2) be amended to give a person providing the information/answers the right to adduce and to have such information/answers admitted if that person chooses to do so. The Administration has agreed to give a person the right to adduce or admit self-incriminating information and will amend clause 45(2) to that effect.

Threshold for issue of warrant to enter and search premises (clause 48)

118. Clause 48 provides that a judge of the CFI may issue a warrant to enter and search any premises if the judge is satisfied, on application made on oath by an authorized officer, that there are reasonable grounds to suspect that there are or are likely to be documents on the premises that may be relevant to an investigation by the Commission.

119. Some members have expressed concern that the above threshold of "reasonable grounds to suspect" is too low, and opine that a higher threshold of "reasonable grounds to believe" should be adopted instead considering that greater care should be exercised for issuing warrant for entering and searching premises to seize evidence.

120. The Administration considers this threshold appropriate to enable the Commission to gather the necessary evidence. The Administration has advised that this threshold is the standard for the issue of warrant in a number of legislation in Hong Kong such as the Copyright Ordinance and the Securities and Futures Ordinance, and is on par with that in the competition laws in the UK and Singapore.

Specifying the types of persons to whom an authorized officer may call upon to assist (clause 50)

121. Clause 50(2) provides that "an authorized officer may call upon such other persons as he or she considers necessary to assist the officer in the performance of any function under this section".

122. Some members have expressed concern that it is inappropriate 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 the officer in performing the function.

123. In view of members' concerns, the Administration has proposed to amend clause 48 of the Bill, drawing reference from section 191(1) of the Securities and Futures Ordinance (Cap. 571), to provide that the CFI may issue a warrant authorizing a person specified in the warrant and such other persons as may be necessary to assist in the execution of the warrant. For clarity sake, the Administration has also suggested introducing an amendment to clause 48 by stating that the CFI may impose conditions upon the execution of the warrant.

<u>Enforcement powers of Commission</u>

Withdrawal of acceptance of commitment (clause 60)

124. Clause 60 provides that the Commission may withdraw an acceptance of commitment. Some members opine that the withdrawal of acceptance of commitment may have serious consequences, especially as the undertaking(s) concerned might have already made certain business decisions on the basis of

the commitment. They have requested the Administration to consider making the withdrawal a reviewable determination under clause 81.

125. The Administration has advised that the withdrawal would in effect bring the parties back to the position as if no commitment has been made, while carrying no legal consequence in itself. Hence, the decision relating to the withdrawal is not made one of the reviewable determinations under clause 81. If the Commission intends to institute legal proceedings against an undertaking after the withdrawal of its acceptance of a commitment, it is still required to prove before the Tribunal that it has reasonable grounds to believe that a contravention has occurred. The threshold currently proposed for triggering off a withdrawal under clause 60 has struck a balance between safeguarding the interest of the parties and ensuring efficacy of the Commission's enforcement work.

Consequence of not making a commitment (clause 67)

126. Clause 67 provides that a person is not obliged to make a commitment to comply with the requirements of an infringement notice, which if accepted would have the effect, pursuant to clauses 66(2) and 74, of barring the Commission from bringing proceedings in the Tribunal against that person in respect of the alleged contravention specified in the notice.

127. Some members have expressed concern that, by stating that the person is not obliged to make the commitment, clause 67 might be misleading since the Commission might still bring proceedings against a person who does not make a commitment to comply with the requirements of an infringement notice although he has stopped the alleged contravention. Members have requested the Administration to consider amending the clause to properly alert the person to the above consequence and hence the need to make the commitment.

128. The Administration has advised that clause 67 further states that if a person does not make the commitment, the Commission may bring proceedings against that person in the Tribunal in relation to the alleged contravention of the conduct rule. Thus, the effect of accepting the infringement notice, as well as the consequences of not doing so, have been set out clearly in the Bill.

Withdrawal of infringement notice (clause 72)

129. Under clause 72 the Commission may at any time before the expiry of the compliance period, by notice in writing given to a person to whom an infringement notice has been issued, withdraw the infringement notice.

130. Some members consider that the issue of an infringement notice should be a well contemplated move and thus clause 72 should set out the circumstances under which the withdrawal action could be taken.

131. The Administration has advised that the Commission should be given the flexibility to consider the need of withdrawal for each case. Specifying the circumstances under which withdrawal may be effected would hamper the Commission's ability to act aptly according to the circumstances of individual cases.

Failure to comply with requirements of infringement notice (clause 75)

132. Members have noted that according to clause 75(2), nothing in clause 74 "prevents the Commission from bringing proceedings in the Tribunal, where it has reasonable grounds for suspecting that the person who has made the commitment has failed to comply with one or more of the requirements of the infringement notice".

133. Members have requested the Administration to consider whether the threshold of "reasonable grounds for suspecting" is too low and should be changed to "reasonable grounds for believing", and whether the relevant determination to bring proceedings should be made a reviewable determination under clause 81.

134. The Administration considers that the threshold is appropriate having regard to the consensual nature of the infringement notice, in that the suspected failure to honour a commitment should relieve the Commission from the restriction to take alternative enforcement action, which could have been pursued in the first instance. The same reasoning applies to the proposal of not making this Commission's decision a reviewable determination under clause 81.

Competition Tribunal

Role and functions of Tribunal (clause 134)

135. As to enquiry of some members whether a member of the Tribunal, in performing any of his functions under the Bill, would be regarded as a member of a court, the Administration has clarified that since clause 134 of the Bill provides that the Tribunal should consist of the judges of the CFI by virtue of their appointments as such judges, members of the Tribunal are members of the court when performing their functions under the Bill. As for the President and the Deputy President of the Tribunal whom shall be appointed by the CE from among members of the Tribunal, they are carrying out a judicial function under

the Bill.

Conduct of proceedings with informality (clauses 142 and 143)

136. Some members have expressed grave concern that the present drafting of clause 142(2)(a) allowing the Tribunal to receive evidence that would not be admissible in court proceedings, including hearsay evidence, is too broad.

137. The Administration has responded that in attaining justice, the Tribunal should be allowed to consider evidence collected from diverse sources. It has assured members that clauses 146 and 147 of the Bill set out the provisions regarding the rules of evidence and evidence that might tend to incriminate. Similar arrangement is provided in section 219 of the Securities and Futures Ordinance (Cap. 571).

138. Some members have expressed concern whether the Tribunal should conduct its proceeding with informality as stipulated in clause 143(3) of the Bill since it will be a superior court of record and it may impose pecuniary penalty.

139. The Administration has reiterated its policy objective for the Tribunal to conduct its proceedings with as much informality as is consistent with attaining justice, with a view to providing a less formal framework and expeditious proceedings, thereby easing the burden on smaller enterprises involved in competition cases. The Chief Judge of the High Court may make rules, in consultation with the President of the Tribunal, to regulate and prescribe the practice and procedures to be followed in the Tribunal having regard to the Administration's policy intent for informality as currently manifest in section 143(3).

Term and vacancy in office of the President and Deputy President (clauses 135, 136 and 139)

140. Some members have queried whether the independence of the President and Deputy President of the Tribunal would be undermined if they are appointed by the CE to hold office for a fixed term of at least three years and not more than five years.

141. The Administration has advised that providing a specific term of appointment for the President and the Deputy President of the Tribunal would facilitate the appointment (or re-appointment) of suitable members of the Tribunal to be the President or the Deputy President on a regular basis. The fixed-term appointment would be made by the CE on the recommendation of the Judicial Officers Recommendation Commission and would automatically

lapse upon expiration of the term.

142. The Administration has agreed to members' suggestion to amend clause 139(2) on Vacancy in office of President or Deputy President in order to tally with the formulation adopted in other similar provisions (such as clauses 135(1) and 136(1)) in the Bill.

Casting/ second vote of the President/ presiding member (in clause 144)

143. Members have expressed concern about the exercise of the second or casting vote by a presiding member under clause 144(3) of the Bill and requested the Administration to review the arrangement. They have also questioned why the President of the Tribunal could appoint any number of members to hear an application which might lead to the need for the member presiding to exercise a second or casting vote.

144. The Administration has advised that the proposal in clause 144(3) to give the President or the presiding member of the Tribunal a casting or second vote in the case of an equality of votes at a hearing aims to ease any deadlock in a decision upon an equality of votes and helps ensure the efficient operation of the Tribunal. A similar arrangement is adopted in a number of tribunals in Hong Kong such as the Lands Tribunal, the Unsolicited Electronic Messages (Enforcement Notice) Appeal Board, the Appeal Tribunal (Buildings), and the Buildings Energy Efficiency Appeal Board. Compared to the proposal to introduce a requirement on the number of members of the Tribunal hearing a case (e.g. an uneven number), the proposed casting vote ensures that there will always be a decision while providing operational flexibility for the Tribunal to decide on the number of members sitting having regard to the nature of each case. The Administration considers clause 144(3) as presently drafted appropriate for the purposes of the Bill.

Leave requirement for appeal to the Court of Appeal (clause 153)

145. Clause 153 provides for an appeal to the CA against decisions of the Tribunal, including decisions as to the amount of any compensatory sanction or pecuniary penalty.

146. The Bills Committee has noted that the leave requirement to appeal as currently provided in the Bill, i.e. the appeal has "a reasonable prospect of success", is higher than that for appeals from the CFI to the CA. Some members opine that competition law is a new area of law that most industry sectors in Hong Kong are not familiar with, and hence the Administration should consider lowering the requirement for leave to appeal.

147. After having reviewed the issue, the Administration has proposed that the leave requirement in clause 153 be amended to bring it in line with that of the CFI as stipulated in sections 14 and 14AA of the High Court Ordinance (Cap. 4) (i.e. no leave is required except interlocutory appeals and against certain orders of the Tribunal).

Prevention of forum shopping and transfer of proceedings between CFI and the Tribunal

148. Part 7 (clauses 104 to 120) of the Bill provides the legal framework for private actions to be brought by persons who have suffered loss or damage as a result of a contravention of a conduct rule. Clauses 107 and 108(2) respectively provide that pure competition claims must not be brought in the CFI and may only be brought in the Tribunal, while clause 108 allows composite claims, which are claims consisting of competition claims and other claims, to be brought in either the CFI or the Tribunal.

149. In order to discourage "forum shopping" in which parties choose either the CFI or the Tribunal to litigate depending on perceived procedural advantages, the Administration has proposed to amend clause 115 and add new clauses 115A, 115B and 115C to provide for a transfer mechanism under which the decision as to whether a claim should be heard in the CFI or the Tribunal would be made by the courts and not by the parties of the proceedings.

150. Members have noted that under the proposed mechanism, the Tribunal would have a primary jurisdiction on competition matters. Pure follow-on claims would be considered by the Tribunal. This would enable the Tribunal to accumulate experience and expertise in the area of competition law, which is important for the overall development of an effective regulatory framework for competition matters in Hong Kong. In the unlikely event that a composite claim is first brought in the CFI, the CFI would transfer to Tribunal all competition-related parts of the claim, and would retain those closely connected claims only if it is in the interests of justice to do so. The Administration has advised that this would address members' concern that it should be more desirable for as much as possible a composite claim to be heard by the same court.

No proceedings independent of this Ordinance (clause 106)

151. The Administration has proposed to amend clause 106 so that proceedings may not be brought independently, whether under any rule of law or any enactment, if the cause of action is or involves the defendant's

contravention, or involvement in a contravention, of a conduct rule.

152. Members have expressed concern that the Administration's original proposed amendments to clause 106 might have casted the net too wide and have covered common law actions (such as conspiracy to injure) that are based on facts which may involve a contravention of a conduct rule, but do not have any cause(s) of action being the defendant's contravention or involvement of a contravention of a conduct rule. Members are also concerned that if the above-mentioned actions/proceedings are covered by the amended clause 106 and if they involved an alleged contravention of a conduct rule (though not pleaded as a cause of action), such actions/proceedings might effectively be prohibited by the Bill.

153. The Administration has explained that the purpose of clause 106 is to ensure that all private actions, which have any of their causes of action to be the defendant's contravention or the defendant's involvement in a contravention of a conduct rule, must be brought pursuant to and in accordance with the Bill. With the Administration's proposed removal of stand-alone right of private action, clause 106 would preclude all stand-alone private actions, whether under the common law or any enactment, if any of their causes of action is the defendant's alleged contravention or the defendant's involvement in an alleged contravention of a conduct rule. This is to reflect the policy intent that no stand-alone private action would be allowed and to prevent any "backdoor" for such action.

154. However, at any time before or after a determination of contravention of a conduct rule, a private party may bring an action based purely on common law causes of action (i.e. independently of the Bill), even if the facts of the claim may support a finding of contravention of a conduct rule, as long as the contravention of a conduct rule is not pleaded as a cause of action in such claim.

155. To address members' concern, the Administration has agreed to further amend clause 106 to clarify that only proceedings that have any of their cause(s) of action being the defendant's contravention or involvement in a contravention of a conduct rule must be brought under the Bill. It will not restrict the bringing of any common law claims which do not have a contravention of a conduct rule pleaded as a cause of action.

Removal of the new clause 153B

156. The Administration has proposed to add an ouster clause to bar judicial review of the decisions, determinations or orders of the Tribunal made under the Bill on the ground that it would put things beyond doubt that any decision,

determination or order of the Tribunal as a superior court of record should only be reviewed by way of appeal to the CA, which is a higher court.

157. Some members opine that if the Tribunal would be established as a superior court of record, on a par with CFI, judicial review would in principle not apply to the Tribunal's decisions. Moreover, since the Bill would already provide for an appeal mechanism, applications for judicial review of decisions made under it would normally not be approved. There is thus no need to rigidly prohibit judicial review by adding the new clause 153B, which might have the unintended consequence of causing people to apply for judicial review of the decisions, determinations or orders of other tribunals so far not challenged, if similar ouster clauses were not provided in the relevant legislation.

158. The Administration has reiterated that addition of the proposed new clause 153B to the Bill would not deny people the right to review the Tribunal's decisions because appeal could still be lodged against the Tribunal's decisions. However, noting members' concerns that the proposed clause 153B might seem to be banning judicial review of the Tribunal's decisions altogether, the Administration has eventually agreed to remove clause 153B in order to avoid any misunderstanding.

Commission's determinations reviewable by Tribunal

159. Under clauses 81 to 87, a person or undertaking may apply to the Tribunal for a review of certain determinations ("reviewable determinations") made by the Commission. Members have deliberated on which determinations should be made reviewable.

160. Clauses 15 to 20 empower the Commission to grant block exemptions from the application of the first conduct rule. In the original clause 81 of the Bill, the issue, variation or revocation of block exemption orders by the Commission under clauses 15 and 20 are not subject to review by the Tribunal under clause 82.

161. In response to members' suggestion, the Administration has proposed that the Commission's decisions relating to the issue, variation or revocation of block exemption orders be made one of the reviewable determinations by the Tribunal under clause 81 of the Bill.

Concurrent jurisdiction (Part 11)

162. To reconcile the new law with the existing competition regulatory framework in the broadcasting and telecommunications sectors, the Bill provides that the Broadcasting Authority (BA) and the Telecommunications Authority (TA) will have concurrent jurisdiction with the Commission in respect of the investigation and bringing of enforcement proceedings of competition cases in the broadcasting and telecommunications sectors, while their existing adjudicative function will be transferred to the Tribunal.

163. The Bills Committee has noted that the Communications Authority Ordinance (Cap. 616) (CAO) was passed on 30 June 2011 to set up a unified regulator, the Communications Authority (CA), for the broadcasting and telecommunications sectors to administer and enforce, amongst others, the existing Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106), and that with the coming into operation of CAO on 1 April 2012, the functions of the BA and the TA have been transferred to the CA.

164. In view of the establishment of the CA, the Administration has proposed to introduce a number of amendments to Part 11 of the Bill to reflect the institutional and legal changes arising from the CAO.

Consistency in application of law by different regulators

165. Some members expressed grave concern about possible inconsistency and hence conflicts in the application of the competition law arising from the proposed concurrent jurisdiction regime.

166. The Administration has advised that the CA will share the powers of the Commission in respect of enforcing the competition rules in the broadcasting and telecommunications sectors. In exercising their concurrent jurisdiction, the Commission and the CA will adopt the same guidelines which are likely to be authored jointly by both competition authorities. The Memorandum of Understanding (MOU) to be signed between the Commission and the CA will provide for these arrangements in greater detail. Given a common set of competition rules and guidelines, as well as the judicial enforcement model under which the power to adjudicate a competition case will rest with the Tribunal, the concern over inconsistent application of the law should not arise.

Concerns about cases left unattended

167. Some members have expressed concern about the division of responsibility among the competition regulators under the proposed concurrent

jurisdiction, while some expressed concern about regulatory arbitrage under the proposed concurrent jurisdiction regime. They have enquired whether there would be any competition cases left unattended under the proposed concurrent jurisdiction mechanism.

168. The Administration has assured members that with a shared goal to enforce the law, the competition authorities will, through the signing of the MOU, agree on the allocation of responsibilities for competition matters, the manner in which the parties will resolve any dispute between themselves, as well as the provision of assistance to each other, including the secondment of personnel or pooling of experience in conducting cross-sector investigation. The proposed MOU would be sufficient to cater for most scenarios to which concurrent jurisdiction apply. For competition cases that straddle different sectors and require multi-disciplinary expertise and analyses or for other reasons not taken up by the CA, the Commission as the custodian of the competition law will be responsible. Hence, no cases should be left unattended under the concurrent jurisdiction regime.

Commencement

169. The Bills Committee has noted the Administration's intent to implement the Bill in phases after its enactment to allow sufficient time for setting up the Commission and the Tribunal and preparing the guidelines before the competition rules come into force. This will enable the public and the business sector to familiarize themselves with the new legal requirements during the transitional period and make necessary adjustments. It is expected that the transitional period would take at least a year.

170. Hon Regina IP has indicated her intention to move a CSA to the Bill to the effect that the relevant provisions of the enacted Ordinance will come into operation only after the Guidelines prepared by the Commission have been approved by the LegCo.

Review of enacted Ordinance

171. Members have stressed the need for a review of the Competition Ordinance in three to five years' time after its enactment. Some members opine that the review on the competition law should cover, but not limited to, the differential treatment of hardcore and non-hardcore conduct, the cap on pecuniary penalty, the de minimis arrangements, private action rights and merger control.

172. The Administration has undertaken to conduct a review of the operational experience and effectiveness of the competition law in a few years' time after its enactment. The Administration considers that the exact timing of the review should be determined after the coming into effect of the law, when the institutional framework is in place and as Hong Kong builds up its own case law.

Committee Stage amendments

173. Apart from the CSAs referred to in the above paragraphs, the Administration will move a number of amendments to improve the drafting and clarity of the Bill.

174. Hon Albert HO, Hon Ronny TONG and Hon Regina IP have indicated that they will move CSAs as stated in paragraphs 93 and 170 above.

Resumption of Second Reading debate on the Bill

175. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting on 30 May 2012.

Follow-up actions by the Administration

176. The Administration has undertaken –

(a) to set out the following in the speech by the Secretary for Commerce and Economic Development when the Second Reading debate on the Bill is resumed:

(i) the intention to review the turnover threshold for conduct of lesser significance from time to time in light of updated statistics of C&SD (paragraph 52 above);

(ii) the minimum market share threshold of 25% below which an undertaking is considered unlikely to possess a substantial degree of market power (paragraph 59 above); and

(b) to conduct a review of the Competition Ordinance in a few years' time after the prohibition clauses come into effect. The exact timing of the review would be determined taking into account

experience gained and problems encountered (paragraph 172 above).

Consultation with the House Committee

177. The Bills Committee reported its deliberations to the House Committee on 18 May 2012.

Council Business Division 1
Legislative Council Secretariat
23 May 2012

Appendix I

Bills Committee on Competition Bill

Membership List

Chairman	Hon Andrew LEUNG Kwan-yuen, GBS, JP
Deputy Chairman	Hon Ronny TONG Ka-wah, SC
Members	Hon Albert HO Chun-yan
	Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
	Hon LEE Cheuk-yan
	Hon Fred LI Wah-ming, SBS, JP
	Dr Hon Margaret NG
	Hon James TO Kun-sun
	Hon CHAN Kam-lam, SBS, JP
	Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
	Dr Hon Philip WONG Yu-hong, GBS
	Hon Miriam LAU Kin-yee, GBS, JP
	Hon Emily LAU Wai-hing, JP
	Hon Abraham SHEK Lai-him, SBS, JP
	Hon Audrey EU Yuet-mee, SC, JP
	Hon Vincent FANG Kang, SBS, JP
	Hon WONG Kwok-hing, MH (up to 10 October 2011)
	Hon Jeffrey LAM Kin-fung, GBS, JP
	Hon WONG Ting-kwong, BBS, JP
	Hon CHIM Pui-chung
	Prof Hon Patrick LAU Sau-shing, SBS, JP
	Hon Cyd HO Sau-lan
	Hon Starry LEE Wai-king, JP

	Dr Hon LAM Tai-fai, BBS, JP
	Hon CHAN Hak-kan
	Hon Paul CHAN Mo-po, MH, JP
	Hon CHAN Kin-por, JP
	Dr Hon Priscilla LEUNG Mei-fun, JP (up to 18 January 2011)
	Dr Hon LEUNG Ka-lau
	Hon CHEUNG Kwok-che (up to 15 April 2011)
	Hon WONG Kwok-kin, BBS
	Hon IP Kwok-him, GBS, JP (up to 26 October 2011)
	Hon Mrs Regina IP LAU Suk-yee, GBS, JP
	Hon Paul TSE Wai-chun, JP
	Dr Hon Samson TAM Wai-ho, JP (up to 18 March 2011)
	Hon Alan LEONG Kah-kit, SC
	Hon LEUNG Kwok-hung
	Hon Tanya CHAN
	Hon Albert CHAN Wai-yip (up to 6 December 2010)
	Hon WONG Yuk-man
	(Total : 34 members)
Clerk	Mr Derek LO
Legal Adviser	Mr Timothy TSO

Appendix II

Bills Committee on Competition Bill

List of organizations and individuals which have given views to the Bills Committee

1. 3D-Gold Jewellery (HK) Limited
2. A.M. International Manufacturers Company Limited
3. A.S. Watson Group
4. Aaron SHUM Jewelry Ltd.
5. Able Lapidary & Jewelry Ltd.
6. Ah Chan Jewellery & Clasp Mfy. Ltd.
7. Alliance for Competition Law
8. Arcotect Limited
9. Artis Jewellery Co. Ltd.
10. Arts Optical International Holdings Limited
11. ARYAN International
12. Asia Pearl (HK) Company Limited
13. Asian Licensing Association
14. AsiaWorld-Expo Management Limited
15. Association of Landscape Consultants
16. Association of Motion Picture Post Production
17. Aurostyle Limited
18. Biba Toys Company Limited
19. Billion Talent (HK) Limited
20. Blue Box Holdings Limited
21. Bright Sun Coffee Company Limited
22. Brilliant Trading Company (1974) Limited
23. Buildview Jewellery Limited
24. CAMi (HK) Co., Ltd.
25. Campell Group (Hong Kong) Limited
26. Canaan Holdings Limited
27. Canshang Limited
28. Carat Jewellery Limited
29. Cathay Pacific Airways Limited
30. Chamber of Security Industry
31. Chase Jewellery Manufactory Ltd.
32. Cheer Advertising & Marketing Company Limited
33. Choi, Lo & Co.
34. Civic Party
35. CK Cheung (CPA) Co., Limited
36. CKICOM Technology Limited
37. Classic Jewelry Company

38. COG Limited
39. Color Rich Limited
40. Community Development Initiative
41. Concern Group for a Competitive Exhibition Industry in Hong Kong
42. Conpak Management Consultants Ltd.
43. Construction Industry Council
44. Consumer Council
45. Continental Jewellery (Mfg) Limited
46. Crossover International Co. Ltd.
47. Crowe Horwath (HK) CPA Limited
48. Crown Wine Cellars Ltd.
49. Crown Worldwide (HK) Limited
50. CSL Limited
51. D Dong
52. Dai Sun Jewellery Company Limited
53. DCH Logistics Company Ltd.
54. Designing Hong Kong Limited
55. Diamond Federation of Hong Kong, China Limited
56. Diamond Wear Limited
57. Double Arts Jewellery Manufacturer Limited
58. Dr Andreas STEPHAN, Lecturer in Law, Centre for Competition Policy, University of East Anglia
59. Dr Andrew SIMPSON, Assistant Professor, School of Accounting and Finance, Hong Kong Polytechnic University
60. Dr Félix MEZZANOTTE, Assistant Professor, Hong Kong Polytechnic University
61. Dr Kelvin WONG
62. Dr Robert HANSON
63. Dr Sandra Marco COLINO, Research Assistant Professor, The Chinese University of Hong Kong
64. East Arts Jewelry Mfy. Limited
65. Economic Synergy
66. Edwin Yeung & Company (CPA) Limited
67. Elegance Jewellery International Limited
68. Environmental Services Contractors Alliance (Hong Kong)
69. Federation of Hong Kong Industries
70. Federation of International SME Ltd.
71. Fenix Fashion Ltd.
72. Firedog Studio Company Limited
73. Fortune Star Jewellery Company Limited
74. FRA Limited
75. Front Top Jewelry Mfr Limited
76. Fu Yuen Watch Co., Ltd.
77. Geneva Watch Group

78. German Pool (HK) Ltd.
79. Glamm Holdings Ltd.
80. Global Sources
81. Go On Global Company
82. Gold Field Co. Mfg. Limited
83. Gold Peak Industries (Holdings) Limited
84. Goldiaq Creation Limited
85. Goldride Securities Limited
86. Good Luck Jewelry International Limited
87. Good Way Jewellery Manufactory Limited
88. Grandford International Promotions Limited
89. Graphic Arts Association of Hong Kong
90. Great Eastern Healthcare Ltd.
91. Green & Associates (HK) Limited
92. Hang Hing Prestige Company Limited
93. Hanville Company Limited
94. Hape International (Hong Kong) Limited
95. Heng Mei Pearl Company Limited
96. Henry Jewellery Manufacturer Company Limited
97. Hi-Tech Jewelry Manufacturer Ltd.
98. HK Noise
99. HKT Limited
100. Hong Kong & Kowloon Electrical Appliances Merchants Association Ltd.
101. Hong Kong & Kowloon Plastic Products Merchants United Association Limited
102. Hong Kong (Int'l) Watch Bracelets & Parts Fty Ltd.
103. Hong Kong (SME) Economic and Trade Promotional Association Ltd
104. Hong Kong Apparel Society Limited
105. Hong Kong Association for Promotion & Development of SMEs
106. Hong Kong Association of Freight Forwarding and Logistics Limited
107. Hong Kong Auto Parts Industry Association
108. Hong Kong Brands Protection Alliance
109. Hong Kong Business Community Joint Conference
110. Hong Kong Chamber of Films Limited
111. Hong Kong Comics & Animation Federation Limited
112. Hong Kong Competition Law
113. Hong Kong Construction Association
114. Hong Kong Critical Components Manufactures Association
115. Hong Kong Democratic Foundation
116. Hong Kong Design Maker Association
117. Hong Kong Economic & Trade Association
118. Hong Kong Electrical Appliances Manufacturers Association

119. Hong Kong Electrical Contractors' Association Limited
120. Hong Kong Electronics Industry Council
121. Hong Kong Electro-Plating Merchants Association Limited
122. Hong Kong Environmental Industry Association
123. Hong Kong Far Infrared Rays Association
124. Hong Kong Federation of Innovative Technologies and Manufacturing Industries Limited
125. Hong Kong Footwear Association
126. Hong Kong Fur Federation
127. Hong Kong General Chamber of Commerce
128. Hong Kong Gold & Silver Ornament Workers & Merchants General Union
129. Hong Kong Green Manufacturing Alliance
130. Hong Kong Independent Advertising Agencies Association Limited
131. Hong Kong Industry, Trade and Investment Association
132. Hong Kong Institute of Patent Attorneys
133. Hong Kong Investment Funds Association
134. Hong Kong Jade Wholesalers & Retailers Association Limited
135. Hong Kong Jewellery & Jade Manufacturers Association
136. Hong Kong Jewellery Alliance Company Limited
137. Hong Kong Jewelry Manufacturers' Association
138. Hong Kong Logistics Association
139. Hong Kong Medical and Healthcare Device Industries Association
140. Hong Kong Metal Finishing Society
141. Hong Kong Metal Merchants Association
142. Hong Kong Motion Picture Industry Association Ltd.
143. Hong Kong Mould and Product Technology Association
144. Hong Kong Precision Electronics Co. Ltd.
145. Hong Kong Printed Circuit Association
146. Hong Kong Promotion Association for Small and Medium Enterprises
147. Hong Kong Retail Management Association
148. Hong Kong Securities Association
149. Hong Kong Small & Medium Enterprises General Association
150. Hong Kong Small and Medium Enterprises Association
151. Hong Kong Small and Medium Enterprises Association
152. Hong Kong SME Development Association
153. Hong Kong SME Development Federation Ltd.
154. Hong Kong Software Industry Association
155. Hong Kong Sub-Chapter of Licensing Executives Society China
156. Hong Kong Toys Council
157. Hong Kong Venture Capital and Private Equity Association
158. Hong Kong Watch Manufacturers Association Limited

159. Hong Kong Wireless Technology Industry Association
160. Hong Kong Young Industrialists Council
161. Hongkong Association of Freight Forwarding and Logistics Ltd
162. Hongkong Salvage & Towage
163. Hung Ngai Jewellery Fty. Limited
164. Hutchison Port Holdings Limited
165. Hutchison Telecom Hong Kong
166. ICY Jewellery Design
167. IDEE Creations
168. Information and Software Industry Association Ltd.
169. Inhesion Industrial Co., Ltd.
170. Institution of Dining Art
171. International Federation of the Phonographic Industry (Hong Kong Group) Limited
172. International Jewellery Manufacturer Limited
173. Investors Protection Association
174. Jade Forever Jewellery Company Limited
175. Jan Cheong Sing Hardware
176. Jointek Fine Wines Limited
177. Joyas Manufacturing Ltd.
178. K K Jewellery Co. Ltd.
179. Kampery Group
180. King Diamond Trading Company
181. King Fook Jewellery Group Limited
182. Kings Mark Designer & Manufactory Limited
183. Kintoy Die-Casting Manufactory Limited
184. Knitwear Innovation and Design Society Limited
185. Kowloon Chamber of Commerce
186. Kowloon Watch Company
187. Kowloon Watch Group
188. Kwun Tong District Council
189. Land Dragon Real Estate Agency
190. League of Social Democrats
191. Legend Jewelry Company Limited
192. Licensing & Franchising Association of Hong Kong
193. Lily & Co. International Jewellery Limited
194. Lorenzo Jewelry Limited
195. Mainway Supply Chain Solutions Limited
196. Management Consultancies Association of Hong Kong
197. Mandarin Optical Manufactory Co. Ltd.
198. Master Creations Ltd.
199. Michael
200. Modernized Chinese Medicine International Association
201. Momentum 107

202. Movie Producers and Distributors Association of Hong Kong Limited
203. Mr Andrew SHUEN
204. Mr Burton ONG, Associate Professor, National University of Singapore
205. Mr CHEUNG Wai-man, Professor, The Chinese University of Hong Kong
206. Mr David LAI Hin-kiu
207. Mr David LAI, Wanchai District Councillor
208. Mr Douglas HSIA
209. Mr Joseph Y K YAU
210. Mr Martin OEI
211. Mr Peter WONG
212. Mr Simon LEE
213. Mr Simon WONG Ka-wo
214. Mr Thomas CHENG, Assistant Professor, The University of Hong Kong
215. Mr Thomas WONG
216. Mr YEUNG Wai-sing, Eastern District Councillor
217. Mr YEUNG Wai-yip
218. MRC Technology International Ltd.
219. Ms Anita LEUNG
220. Ms Caron Beaton-Wells, Associate Professor, University of Melbourne
221. Ms CHAN Shu-ying, Tuen Mun District Councillor
222. Ms Christine FONG Kwok-shan, Sai Kung District Councillor
223. Ms Deborah Healy, Senior Lecturer, University of New South Wales
224. Ms Kiwi CHAN
225. MTR Corporation Ltd
226. Myer Jewelry Mfr. Limited
227. Nelson Jewellery Arts Company Limited
228. New Forum
229. New World First Ferry Services Ltd
230. Nu Design Limited
231. Paradiso Jewellery Limited
232. PARKnSHOP
233. Paul Li Jewellery Limited
234. PCCW Limited
235. Peershine Jewellery H.K. Limited
236. Perception Digital
237. Pico Far East Holdings Limited
238. Ponti Trading Limited
239. Power Hub Limited

240. Professor Allan Fels, Dean, The Australia and New Zealand School of Government
241. Professor Catherine WADDAMS, Professor and Director of the ESRC Centre for Competition Policy, University of East Anglia
242. Professor David GERBER, Distinguished Professor of Law, Chicago-Kent College of Law
243. Professor Hans MAHNCKE, Senior Coordinator, Office of the Provost, City University of Hong Kong
244. Professor LIN Ping, Lingnan University, Hong Kong
245. Professor Mark WILLIAMS, School of Accounting and Financing, Hong Kong Polytechnic University
246. Professor Michael JACOBS, Distinguished Research Professor of Law, DePaul University College of Law
247. Professor Michal Gal, Professor and Vice Dean, University of Haifa School of Law
248. Professor Morten HVIID, Professor of Competition Law, Centre for Competition Policy, University of East Anglia
249. Professor Richard WHISH, King's College London
250. Professor Rudolph PERITZ, New York Law School
251. Professor Toshiaki Takigawa, Kansai University, Osaka
252. Professor WANG Xianlin, Professor and Associate Dean, Shanghai Jiaotong University KoGuan Law School
253. Professor WANG Xiaoye, Professor and Director of Economic Law Department, Institute of Law, Chinese Academy of Social Sciences
254. Professor XU Shiying, Professor and Director of Competition Law Institute, East China University of Political Science and Law, Shanghai
255. Profit Gem Jewellery (Group)
256. Property Agencies Association
257. Prorsum Group Holdings Limited
258. Providence Enterprise Limited
259. Qiann Designs Limited
260. Rebeau Jewellery (H. K.) Limited
261. Red Lemon Incorporation
262. Reed Exhibitions Limited
263. Regent Lane Ltd.
264. Regent Silverware Manufacturing Ltd.
265. Richard Jewelry Company Limited
266. Rio Pearl
267. ROMUS Ltd.
268. Savantas Policy Institute
269. Savantas Youth Service Group (Southern District)
270. Simon W.F. Ng & Company
271. Sincere Overseas Jewellery Ltd.

272. Sinojewel (HK) Limited
273. SME Committee of Liberal Party
274. SME Forum
275. Sonca Products Ltd.
276. Spencer Diamonds Company Limited
277. Sunart Limited
278. Sunning Holdings Limited
279. Sunny Creations Ltd.
280. Tai Pan Bread & Cakes Company
281. Task Force on Competition Law
282. Taxi & P.L.B Concern Group
283. Technic International Jewellery Company Limited
284. Technical (HK) Manufacturing Limited
285. The Alternative Investment Management Association
286. The American Chamber of Commerce in Hong Kong
287. The Association of Architectural Practices Ltd.
288. The Association of Consulting Engineers of Hong Kong
289. The British Chamber of Commerce in Hong Kong
290. The Chinese General Chamber of Commerce
291. The Chinese Manufacturers' Association of Hong Kong
292. The Chiu Chau Plastic Manufacturers Association Co., Ltd.
293. The Dairy Farm Company Ltd
294. The Federation of Hong Kong Footwear Ltd.
295. The Federation of Hong Kong Watch Trades & Industries Ltd.
296. The Hong Kong Association of Banks
297. The Hong Kong Association of International Co-operation of Small and Medium Enterprises
298. The Hong Kong Chamber of Small and Medium Business Ltd
299. The Hong Kong Chinese Importers' & Exporters' Association
300. The Hong Kong Electronic Industries Association
301. The Hong Kong Energy Conservation Association
302. The Hong Kong Exporters' Association
303. The Hong Kong Federation of Insurers
304. The Hong Kong General Chamber of Small & Medium Business
305. The Hong Kong Institute of Architects
306. The Hong Kong Jewellers' & Goldsmiths' Association Ltd.
307. The Hong Kong Metals Manufacturers Association
308. The Hongkong and Shanghai Banking Corporation Limited
309. The International Association of CFOs and Corporate Treasurers (China) Limited
310. The Law Society of Hong Kong
311. The Lion Rock Institute
312. The Professional Commons
313. The Professional Validation Council of Hong Kong Industries
314. The Real Estate Developers Association of Hong Kong

315. The Toys Manufacturers' Association of Hong Kong
316. Thousand Million Jewellery Manufacturing Limited
317. Tin Yin Jewellery (HK) Limited
318. Tomson Holdings Limited
319. Top Quality (H.K.) Co. Ltd.
320. Topchoice Industries Limited
321. TOY2R (HK) Limited
322. Treasure Glory Asia Limited
323. Treasure Will Limited
324. Trendy Asia Limited
325. Tuen Mun District Council
326. UBM Asia Limited
327. Universe Watch Trading Co. Ltd.
328. Vista Jewelry Limited
329. Waddy Jewellery Co., Ltd.
330. WCJ International Limited
331. WE marketing group
332. Wing Hang Diamond Company Limited
333. Wings Trading (HK) Co. Ltd.
334. Winning Metal Manufacturing Company Limited
335. Wiseville International Ltd.
336. Woo Leung Lee Jewellery Company Limited
337. World Essense Holdings Limited
338. Wu Leung Lee (Man Yick) Jewellery Company
339. Yah Chiu Jade
340. Yat Chow Pearls & Gems Company
341. Yeung's Manufacturing Ltd.
342. Yip Design Ltd.
343. Yorkmass Limited
344. Young DAB
345. Yuk Oi Trading Company
346. Zigen Pharmaceutical Ltd
347. Zurich Insurance Company Limited
348. 支持競爭法立法關注組
349. 打破政府壟斷大聯盟
350. 港粵中小企聯合會
351. 鄭頌穎