Motion on
"Safeguarding the room for business and development of small and medium enterprises" moved by Dr Hon LAM Tai-fai at the Legislative Council meeting of Thursday, 23 June 2011

Progress Report

Purpose

At its meeting on 23 June 2011, the Legislative Council passed a motion on "Safeguarding the room for business and development of small and medium enterprises". The full text of the passed motion is at **Annex**. This paper briefs Members on the latest developments and the relevant measures taken by the Administration.

Small and Medium Enterprise (SMEs) in Hong Kong

2. At present, there are more than 0.29 million SMEs in Hong Kong, accounting for over 98% of the total number of local enterprises. In terms of number of employees, SMEs also employ nearly 50% of all employees in the private sector. SMEs are an important economic pillar of Hong Kong. The Administration attaches great importance to the sustainable development of SMEs, and is committed to create a favourable business environment for them.

3. Through various government departments and quasi-government agency such as the Hong Kong Trade Development Council and Hong Kong Productivity Council, the Administration has been providing different types of support for SMEs in Hong Kong to enhance their competitiveness. In view of the sluggish world economy, the Hong Kong Trade Development Council (TDC) will step up their promotion efforts in the coming year in both the Mainland and emerging markets (e.g. the Association of Southeast Asian Nations (ASEAN), Central and Eastern Europe, South Asia, Latin America etc.) as well as the niche sectors (e.g. eco products) to help SMEs find new business

opportunities. The TDC will also continue to assist Hong Kong brands to further tap the Mainland domestic market and leverage on demand for services arising from urbanisation and the Mainland "go global" policy, with a view to capitalising on the opportunities brought about by the National 12th Five-Year Plan. Various value-added services for SMEs, including free advisory services, promotion of the TDC's services in new social media platform, business matching etc., would also be strengthened to cater for the changing needs of SMEs.

4. The various SME funding schemes operated by the Trade and Industry Department have been well-received by the trade since their establishment in 2001. To continue to render support to our SMEs, we have sought the approval of the Finance Committee (FC) of the Legislative Council (LegCo) on 18 July 2011 to substantially increase the total loan guarantee commitment for the SME Loan Guarantee Scheme from $20 billion to $30 billion, and to inject an additional $1 billion into the SME Export Marketing Fund and SME Development Fund, thereby increasing the total commitment for the two funds from $2.75 billion to $3.75 billion. To further assist Hong Kong enterprises in tapping the Mainland market, the Chief Executive has announced in his Policy Address this year the proposal to set up a dedicated fund of $1 billion to encourage them to move up the value chain and build brands by leveraging Hong Kong's strengths in design. We will draw up the implementation details as soon as possible and liaise with the trade and relevant organisations in the next few months, before seeking funding approval of FC in the first half of 2012.

5. Given that Hong Kong is a free and open economy vulnerable to external economic circumstances, we have been closely monitoring the overall economic situation and providing appropriate support to SMEs in response to economic changes. With the recent sharp downturn in the external economy, Hong Kong's economy will face greater downside risks next year. As the Chief Executive has pointed out in his Policy Address this year, the Administration would brace itself for this and keep a close watch on the changes in the external environment. We would pay particular attention to the difficulties faced by SMEs, and introduce timely and effective measures to tide them over when necessary.

Impact of Cross-Sector Regulation on SMEs

6. Since SMEs are an economic pillar of Hong Kong, legislation enacted to implement cross-sector policies may inevitably affect SMEs and employees of SMEs.

7. If a blanket exemption is granted to all SMEs from the application of all cross-sector legislation, that means more than 98% of all local companies and their over 1.2 million employees would not be subject to any cross-sector regulation. This will seriously undermine the effective implementation of the law, and is not in line with the overall public interest of Hong Kong. A more pragmatic approach is to adopt appropriate measures to address specific concerns of stakeholders, including SMEs. Therefore, during the formulation of different policies and legislative proposals, the Administration would collect and consider views and concerns of different sectors of the society, including those of SMEs. The aim is to strike a balance between the needs of different stakeholders and the interests of the general public.

Concerns on the Competition Bill

8. Most of the Members who spoke during the motion debate expressed concerns over the Competition Bill (the Bill), which is being examined by the LegCo Bills Committee on Competition Bill (the Bills Committee). Members' concerns centered around a few main areas. First, Members considered that the general prohibition against anti-competitive agreements lacked clarity and was difficult for SMEs to understand and comply with. The new law would place considerable burden on SMEs. Second, some Members considered that the pecuniary penalty cap of 10% of global turnover for each year in which the contravention had occurred was too severe. Third, there were suggestions that the proposed "de minimis" arrangements should be laid down in the law to give more certainty to SMEs.

9. The Administration accepts that there is a need to address these issues. Taking into account the concerns of the business community, the general public's aspiration for an effective cross-sector competition law and the actual circumstances of Hong Kong, the Administration has proposed a number of amendments to the Bill. We have presented and explained our proposals to

the Bills Committee on 25 October 2011. In brief, the Administration proposed to –

(a) differentiate between hardcore and non-hardcore anti-competitive agreements, and adopt a lighter enforcement approach for the latter. A new "warning notice" mechanism will be introduced in respect of non-hardcore anti-competitive agreements under which the Competition Commission (the Commission) must warn the infringing parties before instituting any legal proceedings;

(b) remove the discretionary power of the Commission to impose a requirement for an infringing undertaking to pay a sum not exceeding $10 million under the infringement notice regime;

(c) set out the "de minimis" arrangements in the Bill so that agreements and undertakings with turnover lower than the specified thresholds would be excluded from the application of the conduct rules. The exclusion, however, does not apply to agreements involving the four types of hardcore anti-competitive activities (i.e. price-fixing, bid-rigging, market allocation and output control);

(d) revise the cap on pecuniary penalty that may be imposed on an infringing undertaking from the original 10% of global turnover (with no fixed time limit) to 10% of the local turnover for up to three years;

(e) remove the right to take standalone private action under the Bill. The Administration will review the need to introduce the standalone-right of private action in a few years' time; and

(f) carve out merger activities from the application of the conduct rules to give effect to our stated policy intent of not introducing cross-sector merger regulation at this stage, except for the telecommunications sector.

A copy of the relevant paper submitted by the Administration to the

Bills Committee can be downloaded from the following website –

http://legco.gov.hk/yr09-10/english/bc/bc12/papers/bc121025cb1-91-1-e.pdf

10. We believe the proposed amendments would form a new basis for more focused discussion of the Bill. The Administration will continue to listen, build consensus and strive for the enactment of the Bill within the 2011-12 legislative session.

Commerce and Economic Development Bureau
November 2011

Annex

Motion on
"Safeguarding the room for business and development of small and medium enterprises" moved by Dr Hon LAM Tai-fai at the Legislative Council meeting of Thursday, 23 June 2011

Motion as amended by Hon Fred LI Wah-ming

That after the financial tsunami, European and American economies have not yet fully recovered, and market purchasing power has yet to revive, in addition, the US dollar has remained weak, the exchange rates of Renminbi, etc., have kept rising, rents and raw materials prices have continued to soar, causing operating costs to increase substantially and making the business environment of small and medium enterprises ('SMEs') very difficult; what SMEs worry more is that if regulatory legislation is enacted in the future, they may easily contravene the law inadvertently, be oppressed by large enterprises bringing private litigations against them, and they need to bear heavy compliance costs and litigation fees, thus dealing a severe blow to their business and development, and producing inestimable negative impact on the overall economic development and employment in society; in this connection, this Council urges that when enacting cross-sector regulatory legislation, the Government should comprehensively study and consider SME's difficulties and worries, so as to effectively safeguard consumer interests as well as SMEs' room for development and sustainable competitiveness.