OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 6 June 2012

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT
THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, S.B.S., S.B.ST.J., J.P.

THE HONOURABLE LEE CHEUK-YAN

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.M., G.B.S., J.P.

THE HONOURABLE FRED LI WAH-MING, S.B.S., J.P.

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, G.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE WONG YUNG-KAN, S.B.S., J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE LAU WONG-FAT, G.B.M., G.B.S., J.P.

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

THE HONOURABLE ABRAHAM SHEK LAI-HIM, S.B.S., J.P.

THE HONOURABLE LI FUNG-YING, S.B.S., J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, S.B.S., J.P.

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE VINCENT FANG KANG, S.B.S., J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

DR THE HONOURABLE JOSEPH LEE KOK-LONG, S.B.S., J.P.

THE HONOURABLE JEFFREY LAM KIN-FUNG, G.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, G.B.S., J.P.

THE HONOURABLE CHEUNG HOK-MING, G.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, B.B.S., J.P.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CHIM PUI-CHUNG

PROF THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING, J.P.

DR THE HONOURABLE LAM TAI-FAI, B.B.S., J.P.

THE HONOURABLE CHAN HAK-KAN

THE HONOURABLE PAUL CHAN MO-PO, M.H., J.P.

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN, J.P.

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

THE HONOURABLE WONG KWOK-KIN, B.B.S.

THE HONOURABLE IP WAI-MING, M.H.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN, J.P.

DR THE HONOURABLE SAMSON TAM WAI-HO, J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBERS ABSENT:

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE TIMOTHY FOK TSUN-TING, G.B.S., J.P.

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.
SECRETARY FOR EDUCATION

DR THE HONOURABLE YORK CHOW YAT-NGOK, G.B.S., J.P.
SECRETARY FOR FOOD AND HEALTH

THE HONOURABLE GREGORY SO KAM-LEUNG, J.P.
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

THE HONOURABLE RAYMOND TAM CHI-YUEN, J.P.
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

The following papers were laid on the table under Rule 21(2) of the Rules of Procedure:

Subsidiary Legislation/Instrument	*L.N. No.*
Securities and Futures (Short Position Reporting) Rules (Commencement) Notice	103/2012

Other Papers

No. 96 ─ The 23rd Report on the Work of the Advisory Committee on Post-service Employment of Civil Servants (1 January - 31 December 2011)

Report No. 21/11-12 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

Report of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011

Report of the Bills Committee on Construction Industry Legislation (Miscellaneous Amendments) Bill 2012

Report of the Bills Committee on Personal Data (Privacy) (Amendment) Bill 2011

Report of the Legislative Council Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products

Report on certain issues related to the distribution of Lehman Brothers-related Minibonds and structured financial products

ADDRESSES

PRESIDENT (in Cantonese): Addresses. Dr Raymond HO will address the Council on the "Report of the Legislative Council Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products".

Report of the Legislative Council Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products

DR RAYMOND HO (in Cantonese): President, in my capacity as Chairman of the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products (the Subcommittee), I now submit the report to this Council on behalf of the Subcommittee.

On 15 September 2008, Lehman Brothers Holdings Inc., the fourth largest investment bank in the United States of America, filed a petition in the United States Bankruptcy Court. Here in Hong Kong, tens of thousands of investors who had purchased and were holding outstanding Lehman Brothers (LB)-related Minibonds and structured financial products suffered losses. According to information of the Hong Kong Monetary Authority (HKMA), some HK$20.23 billion worth of LB structured products had been sold through banks to over 43 700 investors. Many of these investors said that the bank staff who sold these products to them had not apprised them of the nature and risks of such products. They also queried whether the regulatory authorities, namely the HKMA and the Securities and Futures Commission (SFC), and the Administration had exercised effective regulation over the sale of complex financial products by banks. The LB incident has given rise to widespread public concerns.

At the House Committee meeting on 13 October 2008, Members agreed that a subcommittee should be set up under the House Committee to study issues arising from LB-related Minibonds and structured financial products. A motion authorizing the Subcommittee to exercise the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) was passed by Legislative Council on 12 November 2008.

The Subcommittee commenced work in late October 2008 and took forward its work in three stages and by phases. During these stages, the Subcommittee held a total of 163 meetings, including 106 hearings to take evidence from 62 witnesses from the Administration, regulators, the management and front-line staff of six distributing banks of LB structured products and investors of such products. Besides, the Subcommittee held 57 meetings to consider legal and procedural matters, discuss the evidence obtained so as to compile its report.

The issues involved in the LB incident are not only complex, but also highly controversial. Therefore, the Subcommittee has defined its areas of study in a most cautious manner and decided to focus its study on a number of major areas including the regulatory framework and arrangement governing the distribution of LB-related structured financial products by retail banks; the role of the Administration, the HKMA and the SFC in respect of policies and regulation; the systems and practices adopted by banks in relation to their distribution of these products, as well as related issues such as mechanism for dealing with investor complaints and investor protection. The Subcommittee has all along conducted its business in accordance with its Practice and Procedure. Its duties are not to investigate into specific cases, or the performance of some individual financial institutions or their staff. Neither will it assist individual investors to pursue their complaints and recoup their losses.

The Subcommittee's analysis on evidence, observations, conclusions and recommendations in respect of its major areas of study are set out in the report. It is believed that a comprehensive discussion on the report will be conducted by Members in the motion debate on 13 June. Therefore, I will only raise a number of salient points in the following paragraphs.

The commencement of the Securities and Futures Ordinance (SFO) and the Banking Ordinance on 1 April 2003 brought the securities business of banks under the regulatory regime of the SFO. On the regulatory arrangement, the HKMA is the front-line regulator of banks. The HKMA follows the standards and requirements that are stipulated and applied by the SFC to its licensed intermediaries in regulating the regulated activities by banks, including the distribution of LB structured products. Unlike the SFC which maintains a licensing regime for intermediaries engaged in securities business, relevant

individuals (ReIs) who engaged in regulated activities were not required to be licensed. The HKMA relies on the bank management to ensure that their ReIs meet the requirement in terms of fitness and properness, and comply with the regulatory requirements. However, the number of sanctions on them by the HKMA prior to the collapse of the LB is relatively small.

The Subcommittee also notes that the SFC is the regulator of the securities and futures industry in Hong Kong. However, it does not have the power to oversee the regulated activities of banks on a day-to-day basis. The HKMA is responsible for supervising banks, detecting and conducting initial investigation into noncompliance. However, the Monetary Authority (MA) does not have the power to impose disciplinary sanctions on banks and their ReIs engaged in regulated activities. Such power is vested with the SFC. However, the SFC will consult the MA before exercising its power to impose disciplinary sanctions. In the view of the Subcommittee, the division of regulatory powers between the two regulators has given rise to operational complexities which are not conducive to effective regulation of banks and their ReIs who engage in regulated activities.

The regulatory regime of Hong Kong is modelled on the twin pillars of "disclosure-based" and "regulation of intermediaries' conduct at the point of sale" to regulate the sale of investment products by banks. The SFC was responsible for administering the disclosure regime with the objective of ensuring sufficient disclosure of information in the product documentation in accordance with the requirements specified in the Third Schedule to the Companies Ordinance (CO). The Subcommittee has to point out that the "disclosure-based" system is not specifically set up for disclosure of the nature and risks of structured financial products such as Minibonds. Besides, quite a large number of LB-related products could make use of the exemptions under the CO and were distributed by way of private placement. Thus, the offer documentation of such products did not require authorization by the SFC. Such a situation has undermined the usefulness of such a regime.

The HKMA is responsible for the regulation of conduct at the point of sale. According to the observation of the Subcommittee, prior to the collapse of LB, both the HKMA's day-to-day regulation and thematic examinations had not detected serious failure in compliance. This is in sharp contrast to the large

number of complaints about mis-selling after September 2008. After considering the evidence from the management and front-line staff of the six distributing banks and some investors, the Subcommittee is of the view that proper compliance with regulatory requirements in the sale of LB structured products in all circumstances has not been ensured by banks. The Subcommittee has found that there were deficiencies, including inappropriate risk ratings being assigned to LB structured products, the training materials used by some banks contained incorrect information, and so on. After summing up the observations of the Subcommittee, members considered that the HKMA's regulatory work on the regulated activities of banks in the past had largely been ineffective, which is not conducive to the early detection of mis-selling of structured financial products.

The LB incident has exposed the inadequacies of the existing regulatory system in safeguarding investors' interest. However, the Subcommittee must also point out that one should not expect the Administration and the regulators to provide a risk-free investment environment for investors. While the Administration and the regulators have an undisputable responsibility in investor protection, investors must also exercise a reasonable degree of vigilance and due diligence to take responsibility in protecting their own interest.

Regarding the regulatory policies and arrangements applicable to banks for distribution of LB-related structured products, the Sub-Commission has made an analysis and commented on the roles and responsibilities of the former MA, the former Chief Executive Officer of SFC, the Financial Secretary and the Secretary for Financial Services and the Treasury, as detailed in Chapter 8 of the report. The Subcommittee, in concluding its observations, has made more than 50 recommendations on the improvement of the regulatory framework applicable to banks engaged in securities business, enhancing the disclosure-based system, strengthening regulation of conduct by regulators on banks and their employees engaged in regulated activities, as well as the handling of complaints, investor protection and education. For example, the Subcommittee recommends that the authorities should examine the feasibility of placing the securities business conducted by banks under the regulation of the SFC to ensure that the regulated activities conducted by banks and securities brokers will be subject to consistent regulation. Another recommendation is that the regulator responsible for enforcement should be vested with appropriate statutory powers to order the

payment of compensation to customers by intermediaries engaged in securities business. The Subcommittee has urged the authorities to consider in detail the recommendations in the report and to make positive response expeditiously.

Finally, on behalf of the Subcommittee, I would like to express my heartfelt thanks to all the witnesses for giving evidence to the Subcommittee. The issues involved in the study are complex and information is voluminous, apart from new developments arising from the incident. I am most grateful to the Legislative Council Secretariat for their systematic assistance in helping the Subcommittee to finish each stage of work in an objective, professional and solemn attitude in spite of their heavy workload.

Thank you, President.

PRESIDENT (in Cantonese): Dr Philip WONG will address the Council on the "Report on certain issues related to the distribution of Lehman Brothers-related Minibonds and structured financial products".

Report on certain issues related to the distribution of Lehman Brothers-related Minibonds and structured financial products

DR PHILIP WONG (in Cantonese): President, the Chairman of the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products (the Subcommittee) has just submitted its report to this Council. On behalf of three members, including myself, of the Subcommittee, I would like to submit a report from the three of us.

We have no objection to most of the findings and observations in the report of the Subcommittee. However, we wish to fully and clearly explain our views on several issues through our own report. As relevant details are set out in the report, I will only outline several major points.

First of all, we do not think that it is necessary to mention the names of individual distributing banks of Lehman Brothers (LB) structured products in

Chapter 5 of the report of the Subcommittee as the Subcommittee has agreed that the study will not target individual financial institutions and their staff.

Having learnt a lesson from the LB incident, we support that the authorities should enhance investor education initiatives in various aspects. But we must emphasize that investors will also have the responsibility to protect their own interests. The LB incident has precisely highlighted the investors' responsibility and some issues of concern in investor education. For example, investors should not invest in financial products in which they have no knowledge.

Over the past three years, the regulators have reached five collective settlement agreements with a number of LB structured products distributors, thus leading to the resolution of many pending complaint cases. We are of the view that the authorities may consider, with reference to the practices in overseas countries, whether regulators should be vested with appropriate statutory powers to order the payment of compensation to affected investors by regulated persons where the findings so justify.

The LB incident has undoubtedly exposed the inadequacies of the existing regulatory arrangements on banks engaged in securities business. The system has been implemented since April 2003 and it is time to conduct a review and make improvements. The regulators, especially the Hong Kong Monetary Authority, should strengthen their regulatory role. However, as mentioned in paragraphs 13 to 15 of the report, we do not agree with the criticism made by the Subcommittee against the former Monetary Authority, Mr Joseph YAM, and other key witnesses. I believe we will have the opportunity to further express our different views in the motion debate in future.

Finally, we consider that the Subcommittee's study is fruitful and timely. We urge the Government and regulators to seriously consider the Subcommittee's recommendations. We also concur with the remark of Dr Raymond HO, Chairman of the Subcommittee, just now that we are grateful to the Secretariat for their assistance in helping the Subcommittee to discharge its duties in a proactive and effective manner.

Thank you, President.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Adoption of Classification System of Diagnosis-related Groups

1. **DR LEUNG KA-LAU** (in Cantonese): *President, "My Health My Choice", the second stage consultation document on healthcare reform, pointed out that "the Hospital Authority (HA) has already been adopting the diagnosis-related groups (DRG) methodology covering a comprehensive range of public medical services provided in public hospitals for its internal costing and resource allocation purposes. Given that the hospital services provided by the HA encompass most if not all hospital admissions and ambulatory procedures that may be provided in the private healthcare sector, the DRG structure and methodology developed by the HA can be adapted for application in the private health sector, utilizing the expertise already built up in the HA without reinventing the wheel and duplicating the investment. However, much additional work would still be needed to establish the costing and pricing in the private sector based on DRG methodology, given that these are necessarily different from those in the public sector". In this connection, will the Government inform this Council whether it knows:*

(a) the DRG classification already adopted by the HA and the related treatments and operations;

(b) the total numbers of person-times receiving the DRG-related treatments and operations mentioned in part (a) and the total service costs in the past five years, as well as the relevant figures in different hospital clusters; and

(c) the method for calculating costs (including the actual value of various parameters and the formulas used) adopted in the public sector for the DRG-related treatments and operations mentioned in part (a); and the method for calculating costs adopted in the private sector?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, my reply to the three parts of the question is as follows:

(a) Many advanced countries have adopted a casemix model as part of the system to calculate the cost for the acute in-patient services. In 2009-2010, the HA introduced an internationally-accepted casemix model, namely the International Refined ― Diagnosis Related Group, to provide a fair and transparent system for calculation of the quantity and efficiency of acute in-patient services. As for non-acute in-patient services and psychiatric services, there are many other different international casemix models available for use. The HA is still exploring the possible directions in this regard.

Under the DRG system, all possible combinations of over 20 000 diseases and related treatments and procedures set out in the International Classification of Diseases (ICD) are classified into about 1 000 groups.

The ICD was established by the World Health Organization (WHO) of the United Nations to provide standard codes for the classification of diseases and other health problems. Member states of the WHO use ICD data as the basis for compilation of statistics on national mortality and morbidity rates. Many countries apply such data to epidemiology, health management, clinical activities and decision-making on resource allocation.

By adopting the DRG system, the HA classifies each patient episode into different group codes so that it can calculate the workload of hospitals properly according to the number of cases of various groups and the complexity of the cases handled by hospitals.

Since there are a large number of diseases and groups, I will not explain them one by one here. Members may wish to refer to the websites listed at Annex for more details on the background of ICD, the casemix model and DRG.

(b) and (c)

The HA started to adopt DRG for internal reference purposes in 2009 to facilitate its internal costing and resource allocation. The relevant clinical information and the examination of cost figures need to be improved through more thorough deliberation and assessment as well as continuous refinement. In the past three years, the total number of attendances for acute in-patient services was about 1.3 million to 1.4 million, and the relevant costs of such services in 2010-2011 calculated with application of DRG accounted for about 50% of the total expenditure.

In fact, casemix is a highly specialized and technical issue. I would try to illustrate it with a common example. For instance, the episode of a patient who needs to be hospitalized for thyroidectomy will be assigned a DRG code by the system according to the primary cause of illness and the procedures required. The service costs of this episode, including the direct services of clinical specialties (for example, the services provided by surgeons and nurses), the various drugs required by the patient, the costs of pathological and radiological services, the surgery and other relevant expenditures, the various non-clinical support services and daily expenses of the hospital (for example, meals for the patient, repair and maintenance of medical equipment and machinery) and some institutional recurrent expenditure, and so on, will be calculated altogether. After liaising with various stakeholders, the HA will set different parameters for different episodes so as to estimate the resources used in each episode. Then, the HA will arrive at an average value of all patient episodes assigned with the same DRG code in the year and calculate the relative value of this DRG code by a standard statistical methodology. For instance, the relative value of a thyroidectomy case is 2.3. As another example, the relative value of a general case in which a patient uses acute in-patient service for back problems without the need for operation is one, whereas the relative value of a complicated liver transplant case is 37. That means the resources required for providing services to the patient in the complicated liver transplant case is about 37 times of those for the patient with back

problems. In brief, a more complicated illness has a higher relative value, which means that more resources are required.

At present, the HA has adopted the DRG methodology to facilitate its internal costing and resource allocation. It has also projected, based on the principle of financial prudence, various medical-related costs. However, as the HA's DRG system is still in the course of development and refinement, the clinical information and the examination of cost figures need more thorough deliberation and assessment.

As for the private healthcare sector, their costing method and model of operation are not the same as those of the public sector. For instance, compared with the public healthcare system, the private sector will take into account more factors, such as the costs of hospital construction, land premium, profit risks, marketing costs, investment returns, and so on, in calculating their service costs. These factors are not taken into consideration by the public hospitals.

Annex

Websites with reference on ICD,
the casemix model and DRG

1. Background information on the ICD
<http://www.who.int/classifications/icd/en/>

2. Reference publications on various diseases and related treatments set out in ICD
CPHA Annotated, ICD-9-CM, International Classification of Diseases,
9th Revision (1993)
Volume 1, 2 and 3
Commission on Professional and Hospital Activities, Michigan

Online versions for free downloading
Classifications of diseases:

<http://www.cihi.ca/CIHI-ext-portal/pdf/internet/ICD_VOLUME_ONE_2012_EN>

Types of treatments:
<http://www.cihi.ca/CIHI-ext-portal/pdf/internet/CCI_VOLUME_THREE_2012_EN>

3. Background information on casemix models and Diagnosis Related Group (Australia)
<http://www.health.gov.au/internet/main/publishing.nsf/content/health-casemix-ardrg1.htm>

DR LEUNG KA-LAU (in Cantonese): *President, I wish to ask you to make a ruling. The Government has not answered anything at all, so what is the point of asking questions? I can just browse the Internet on my own and that would do.*

The reply I expected should: First, spell out the DRG classification already adopted by the HA, for example, for lung diseases, diabetes, stroke, heart attack or colectomy; second, set out the total numbers of person-times receiving treatments for various types of diseases last year and the total service cost in each case. The Secretary said that the relevant system had been adopted, but why did he refrain from answering the questions that we asked him?

PRESIDENT (in Cantonese): Please ask your supplementary question.

DR LEUNG KA-LAU (in Cantonese): *I have already asked my question but he did not answer it in any way. I want him to answer it again.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I am not going to repeat my reply just now, but I have to point out that at present, the HA uses the International Classification of Diseases (ICD) — 10, which sets out over 20 000 types of diseases, for the purpose of diagnosis and registration. I believe all doctors, in particular, staff members of the HA, are aware of this.

As regards the method of calculation, I have already given Members a brief explanation. This is a rather specialized and technical matter. I cannot possibly print out the whole pile of information, as the hard copy would be thicker than a telephone directory, for Members. I suggest that if Members are interested, they can browse the websites.

DR LEUNG KA-LAU (in Cantonese): *President, can he provide that "telephone directory" in writing to us?*

PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, we have all along attached importance to environmental protection and if Members can find the information on the websites, why do they not browse the websites but want a "telephone directory" to be provided to each of them instead? I do not mean I do not want to do so but if the Legislative Council thinks that it is only by doing so, rather than using electronic and environmentally-friendly means, that Members can be assisted in understanding all the issues, we can also do so.

DR LEUNG KA-LAU (in Cantonese): *President, I meant I wanted him to provide the version kept by the HA rather than the information that can be obtained from such organizations as the WHO. My request is that he provides the version used by the HA.*

PRESIDENT (in Cantonese): Dr LEUNG has clarified his supplementary question. Secretary, do you have anything to add?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I have nothing to add.

DR JOSEPH LEE (in Cantonese): *President, the Secretary pointed out in parts (b) and (c) of the main reply that the relevant method of cost calculation is related to the services and drugs provided by doctors and nurses, and is intended to facilitate resource allocation.*

May I ask the Secretary how the cost of the services provided by nurses is calculated? Concerning the calculation of the cost of the services provided by nurses, the international standard is one nurse for every six patients but the reality now is one nurse for 11 patients. President, does this method of calculation reflect the inappropriate allocation of resources, which further aggravates the shortage of resources?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, as far as I know, the relevant calculation is based on the actual pay and work requirements on healthcare workers at present, for example, how many hours or days are spent by how many nurses in taking care of one patient. Therefore, the calculation is based on the actual workload at present.

MR CHAN KIN-POR (in Cantonese): *President, packaged charging prescribed according to the DRG classification is very attractive to consumers because service users will have greater transparency and certainty of medical fees, so the more packaged chargings according to the DRG classification is adopted, the better. However, Members will also notice that private hospitals and doctors have reservation about or strong views on this kind of packaged charging. The difficulty faced by the Secretary is that consumers find this system very desirable but service providers think that many problems have to be solved. May I ask the Secretary how he can persuade the private sector to look into this system together with him, then work out a solution that both consumers and the healthcare sector would find satisfactory?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, both the general public and professionals are all very much concerned about the trend in healthcare costs. If there is a highly transparent and objective mechanism for calculating healthcare costs, I believe both the public and the sector would all

welcome it. Most importantly, we can present this method of calculation clearly to members of the sector, so as to let them know that the performance any kind of task would yield a reasonable return. I believe this is what matters even more. Making reference to the experience in many countries, after some time, they would also adopt the DRG system in cost calculation, so as to formulate a healthcare insurance system approved of by the general public. We will continue to carry out the work in this regard and plan to complete the work in 2013.

DR PAN PEY-CHYOU (in Cantonese): *President, the DRG system is a healthcare cost calculation method that has been developed for quite a long time in overseas countries, so I believe it certainly has merits and some objectivity. However, I am concerned about the fact that the HA uses this system as the basis of fund allocation, as the Secretary said just now. On the face of it, the harder one works, the more the gains would be as departments treating more patients would get more resources, but we are very concerned that in reality, this would make the resources and facilities more and more concentrated. In other words, some departments would get more resources, so that they can treat more patients and as a result, more patients would go to these departments to seek consultations. This would be extremely unfair to the old, weak, physically impaired and poor patients. May I ask the Secretary if the HA would consider other factors in its allocation of funds, so as to rectify such a bias?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): First of all, I have to point out that Dr PAN's view is not at all correct. First, the DRG system covers all acute cases and be it cases requiring surgery or otherwise, or diseases related to ageing, they are all covered by the DRG system. Of course, if some patients suffer from more complicated conditions, or if they suffer from multiple diseases, the calculation method would be trickier. However, in the past three years starting from 2009, the HA has made quite an enormous effort in this regard and now, this mechanism can be considered quite mature. Therefore, I do not think this would result in patients not receiving proper care.

DR PAN PEY-CHYOU (in Cantonese): *President, the Secretary has not answered my supplementary question. What I ask him is: Does the HA have any other mechanism to remedy the problems arising from using the DRG system alone to calculate patient costs?*

PRESIDENT (in Cantonese): Dr PAN, on the shortcoming of the DRG system as pointed out by you, the Secretary said he believed your view was not correct, so it follows that the question of what you call rectifying the mechanism does not arise. Nevertheless, I will ask the Secretary if he has anything to add.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I would like to let Members understand some more about how the HA allocates its resources. For many years, the HA would allocate its resources to various hospitals having regard to their history. However, ever since the formal establishment and operation of the HA in 1990, each year, adjustments would be made having regard to the workload and complexity of patient conditions. Since the adoption of the DRG system, for a few years in the past, we requested the HA to refine its resource allocation to hospital clusters through this system. Of course, the HA would not use all the relevant parameters in one go for allocation of resources. Simply put, for example, if the averages for the seven clusters is one for a certain cluster and 0.9, 1.1 or 1.2 for some others, and if all the resources are allocated afresh according to the parameters, stark contrasts or differences may occur all of a sudden. Therefore, in the past few years, the HA only used a certain percentage (about 20%) of its resources for the purpose of redeployment each year.

I must also explain in detail that the management of hospitals and healthcare resources is a very complicated issue. For example, in respect of some services relating to convalescence, chronic illnesses or psychiatry, we do not use the DRG system for resource allocation because we find that with longer lengths of stay, more resources are needed. However, in respect of acute illnesses, what we look at is not the length of stay but what treatments patients have to receive. This is far more complicated. Therefore, in some convalescent hospitals, the calculation is still based mainly on the length of stay but with regard to some specialized services, for example, liver transplant, the HA provides additional funds through top-slice funding. For example, for a unit responsible for liver transplants, we have to ensure that it has consistent

manpower and resources, so that it can handle, say, about 80 cases of transplant each year. However, if such a unit can handle more cases, we would allocate more resources to it. For example, each case costs about $800,000 and if the number of patients is more than 80, we have to allocate more resources accordingly. We have to explain this rather complicated approach clearly.

Therefore, the HA does not just rely on a single formula in its management, rather, it has to exercise flexibility. Yet, I must add one point clearly, that is, in respect of some unforeseen circumstances, for example, when staff members have to be mobilized to cope with such problems as contagious diseases, it is all the more necessary to refine the allocation of resources. Therefore, I hope Members will understand this and if they are interested, they can communicate more with the HA.

MR WONG KWOK-HING (in Cantonese): *President, I wish to ask the Secretary a question from the viewpoint of a consumer. Since the HA has adopted the DRG classification in calculating service costs and in the future, the Government would also promote the development of private hospitals, can the Government assist the public in gaining a simple understanding of healthcare costs, so that they can monitor the relevant service costs when using the services of private hospitals? Although the Secretary said in the last paragraph of the main reply that the costs of hospital construction, land premium, profit risks, marketing costs, investment returns, and so on, of the private healthcare sector are not the same as those of the public sector, that these factors are not taken into consideration by the public hospitals and that, take thyroid diseases as an example, assuming that the cost is $20,000 in public hospitals ……*

PRESIDENT (in Cantonese): Mr WONG, you are getting long-winded. Please put your supplementary question in a concise manner.

MR WONG KWOK-HING (in Cantonese): *If private hospitals can set out the basic fees and charges, the public can monitor if the fees and charges of private hospitals are reasonable or not.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, thanks to Mr WONG for this important question. We have to make the general public understand healthcare costs and the fees and charges that may be levied in the future, or the insurance system that would be regulated by us, as this would be more useful. We do not intend to regulate the fees and charges of private hospitals or doctors. However, it is probably important to have an insurance system in place under which all stakeholders can know clearly what services are provided by hospitals, what services patients can make use of and how much the cost or the fees and charges are.

Therefore, introducing the DRG method into the insurance system in the future would be an effective approach. The governments of various places have also used the DRG approach to determine the return for healthcare workers when introducing state-regulated healthcare insurance. Therefore, we will continue to make efforts in this regard, and we also hope that healthcare workers would not be too worried. If the fees and charges levied by them are clear and justified, I believe more patients would choose to use their services.

PRESIDENT (in Cantonese): We have spent more than 22 minutes on this question. Second question.

Verification of Residential Addresses of Registered Electors

2. **MR RONNY TONG** (in Cantonese): *President, it has been reported in the media that after the uncovering of "vote rigging" incidents in last year's District Council (DC) Election, the Registration and Electoral Office (REO) had, through various verification means, selected 290 000 electors and issued inquiry letters to them, requesting them to confirm whether they were still residing in the residential addresses as registered in the register of electors by providing proof of their residential addresses. The reports have pointed out that after the deadline for giving replies, the REO only received about 38 000 replies and about 250 000 electors have not yet replied. In this connection, will the Government inform this Council:*

(a) of a breakdown of the aforesaid 290 000 letters by the six verification means (including random checks, verification of electors' registered addresses through government departments, undelivered poll cards in last year's DC Election and Election Committee Subsector Elections, complaints concerning suspected false addresses in the previous DC Election, undelivered letters in the elector registration exercise for the DC (second) functional constituency, and other means); a breakdown, by the six verification means, of the aforesaid 250 000 electors who have not yet replied; if such information cannot be made available, the reasons for that;

(b) whether the aforesaid 250 000 electors who have not replied to the REO's letters to submit proof of their addresses will thus be disqualified from voting; if so, of the legislation or the power under which the authorities disqualify these electors from voting; as it has been reported that according to the REO's information, 76 000 and 27 000 electors were omitted from the register of electors respectively in 2011 and 2010, while 60 000, 91 000 and 33 000 electors were disqualified in 2009, 2008 and 2007 respectively, of the reasons why the authorities had omitted them from the register; if such information cannot be made available, the reasons for that; and

(c) of the number of suspected cases discovered by the Government so far after the uncovering of the "vote rigging" incidents by the press in November 2011; the number of cases into which investigation has been launched; whether prosecutions have been instituted; if not, of the reasons for that?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, to maintain the integrity of the voter registration system and to enhance the accuracy of information in the register of electors, since January 2012, the REO has implemented a series of measures to increase the number of electors under checking and the extent of checking. Through various checking measures, the REO has conducted checks against 1.7 million electors, which is equivalent to 48% of the total number of electors (that is, 3.56 million)

in the current final register of electors. In accordance with the checking results, the REO has issued inquiry letters to a total of 296 000 electors (17% of all electors selected for checking) according to the relevant regulation, requesting them to confirm whether the addresses in the current final register are still their principal residential addresses. As at 25 May 2012, the REO has received the replies from about 40 000 electors, which is about 13% of the number of inquiry letters sent.

As regards the questions raised by Mr Ronny TONG, our reply is as follows:

(a) Details of the 296 000 inquiry letters sent by the REO and the 255 000 electors who have yet to give a reply to the written inquiries as at 25 May are at Annex.

(b) According to section 7 of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A) (the Regulation), the Electoral Registration Officer (ERO) may make inquiries that he considers fit to ascertain whether the address recorded in the existing final register against a person's name is no longer that person's principal residential address when compiling a provisional register. The Regulation also provides that an inquiry must be made in writing and must be sent by registered post addressed to the person from whom it is made. Section 9 of the Regulation also provides that the ERO must enter into the omissions list the name and principal residential address of any person to whom the ERO has made an inquiry and asked for information but the required information was not received by the ERO on or before the specified date (that is, 16 May).

Accordingly, the inquiry letters state that if an elector fails to give a reply by the specified date to confirm his principal residential address, his name will be included in the omissions list to be published on 15 June 2012. For those whose names are included in the omissions list, unless they reply to the inquiry letter, update their residential addresses or make a claim by 29 June and subsequently

obtain approval from the Revising Officer, their names will not be included in the final register to be published in mid-July and will not be able to vote in subsequent elections, including the Legislative Council Election in September.

In the past, the REO generally issued inquiry letters to those electors whose poll cards have been returned. The main reason for the REO to include the names of electors in the omissions list is because the REO has reason to believe, based on the information gathered after making an inquiry in accordance with the Regulation, that the address recorded in the existing final register against a person's name is no longer that person's principal residential address or that the elector has passed away.

Since the REO mainly issued inquiry letters to electors whose poll cards had been returned, the number of electors included in the omissions list depended on the number of returned poll cards after a Legislative Council Election or DC Election. Therefore, the number of electors who had failed to reply the inquiry letters and thus included in the omissions list was generally larger in the year after a general election than other years.

(c) The cases from complaints and media reports on suspected false addresses of electors after the 2011 DC Election involve 9 940 electors. After investigation, the REO issued inquiry letters to 6 470 electors involved in cases requiring further follow-up actions, requesting them to confirm whether they still reside at their registered addresses and to provide address proof. The REO also referred cases involving a total of 2 120 electors to the law-enforcement agencies for investigation (1 537 electors were involved in the cases referred to the Hong Kong Police Force (HKPF), while 583 electors were involved in the cases referred to the Independent Commission Against Corruption (ICAC)). According to information provided by the law-enforcement agencies, the HKPF has arrested 16 persons so far. The proceedings for a false declaration case involving seven persons have been completed at the Magistrates' court on 2 March 2012. All seven defendants were convicted. One of the defendants was sentenced to four

months' imprisonment (suspended for two years). The other six persons were sentenced to two months' imprisonment (suspended for one year).

The ICAC has so far arrested 53 persons, and prosecution has been instituted in respect of 15 persons. Seven of them have been charged with engaging in corrupt conduct in the 2011 DC Election. Each of the other eight persons has been charged with an offence of knowingly making a false statement in a voter registration application and another alternative offence of recklessly making a statement in a voter registration application which is false in a material particular. One of the defendants admitted the conviction of "making a statement which is false in a material particular". The Magistrates' court on 18 May 2012 sentenced this person to two months' imprisonment (suspended for one year). The charges against the other three persons were dropped. The trials and pre-trials in respect of the remaining 11 defendants will be held in July 2012.

Annex

Checking Measures	*Number of electors covered*	*Number of inquiry letters issued*	*Number of replies returned*	*Number of replies outstanding*
(a) Checks on multiple electors or multiple surnames of electors at one registered residential address and Random sampling checks	130 900	44 260	13 130	31 130
(b) Verification of electors' registered addresses through government departments	1 450 510	99 510	20 320	79 190

Checking Measures	*Number of electors covered*	*Number of inquiry letters issued*	*Number of replies returned*	*Number of replies outstanding*
(c) Follow up on the undelivered poll cards arising from the DC Election and the Election Committee Subsector Elections in 2011	77 970	77 970	2 000	75 970
(d) Follow up on suspected false address cases arising from the 2011 DC Election	9 940	6 470	2 300	4 170
(e) Follow up on the undelivered letters on the voter registration of DC (second) functional constituency	138 600	67 600	2 700	64 900
(f) Other categories (incomplete address, commercial address or suspected non-residential address)	6 900	780	180	600
Total	1 701 620*	296 590	40 630	255 960

Note:

* The total number of electors targeted is 1 701 620 instead of the original sum of 1 814 820 as some of the electors were checked more than once under different checking measures.

MR RONNY TONG (in Cantonese): *President, we can note that the figures are quite alarming because the number of persons included in the omissions list this year might far exceeded those in the past few years by perhaps three or four times.*

President, we can note from the Annex that the largest number involves ordinary random checks, that is, checking measure (b), with the number of electors to be included in the omissions list probably reaching 80 000. President, may I ask the Secretary why the number of electors to be included in the omissions list will increase substantially this year in particular? Would this have anything to do with the inquiry method? We understand that electors checked by measure (b) are basically not suspicious. Such being the case, can the authorities merely request them to prove whether or not they have moved? If not, can they be exempted from giving a reply? Will this method of random check be fairer?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, checking measure (b) in the Annex verifies the registered addresses of electors through government departments, namely the Housing Department (HD) and the Hong Kong Housing Society (HKHS). During the verification, information was fully checked against these two organizations as one of the administrative measures taken in response to the request made earlier by the relevant panel of the Legislative Council. According to the Annex, 99 510 letters have been issued to electors who are primarily those believed to have moved out of their existing registered addresses according to the household records kept by the HD and the HKHS but have failed to update their address information with the REO in time or forgotten to do so.

In the past, we mainly relied on obtaining from the HD or the HKHS records of electors moving in and out during a specified period, but a comprehensive verification was conducted this time around in response to the request made by the Legislative Council. Since a comprehensive verification of information was conducted this time around, the number is indeed larger than those in the past. The REO will review this comprehensive verification method after the election. If it is considered feasible and necessary, we will continue to conduct a comprehensive verification of information with the HD and the HKHS on a regular basis to ensure that the information in the register of electors keeps abreast of the times and is updated in a timely manner.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MR RONNY TONG (in Cantonese): *He has not answered my question at all.*

PRESIDENT (in Cantonese): Please repeat.

MR RONNY TONG (in Cantonese): *My supplementary question asked the Secretary how the authorities inquired with those electors and whether the inquiry method was too complicated. If the electors have not changed their addresses, they should not be required to give a reply before their names can be retained in the register of electors. President, my question for the Secretary is mainly about the inquiry method.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, in accordance with the law, the ERO is required to send an inquiry in writing by registered post once suspicious cases are found. All the cases mentioned just now were dealt with according to the statutory procedure laid down in the existing legislation. Generally speaking, after the issuance of the inquiry letters, the authorities will give the electors concerned several weeks to furnish the required information before the ERO determines according to the information whether further actions should be taken. This is the inquiry procedure stipulated in the existing legislation.

MR RONNY TONG (in Cantonese): *President, he has still not answered my question. May I request the Secretary to provide some samples of the inquiry letters to colleagues in the Legislative Council later so that we can follow up the matter?*

PRESIDENT (in Cantonese): The Member would like to look into the details of the inquiries.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I can provide such samples. In fact, the Panel on Constitutional Affairs has conducted many discussions on the subject of voter registration. I am very pleased to provide the samples as supplementary information. (Appendix I)

DR PRISCILLA LEUNG (in Cantonese): *Those intentional acts of "vote rigging" and corrupt conduct should be punished severely. Regarding the series of new checking measures implemented by the Government, may I ask whether the Government has provided any assistance to persons who might just be ignorant or who have not replied to the inquiry letters out of good will? After listening to the Secretary's reply just now, my feeling was: Are the authorities "driving electors away"? Let me cite the latest case I have received. I was told by a member of the public this morning that he had received such letters but decided not to give a reply because he was terrified by the inquiry, even though he would not moved until September. This precisely shows that members of the public are not offered any assistance during the inquiries.*

Although inquiry letters have been issued to 290 000 electors, only 40 000 replies have been received. If the remaining electors still do not take any action, they will all be disqualified, but they actually have the right and are qualified to vote. Hence, may I ask the Secretary whether he is "driving electors away" in doing so? Has the Government offered any assistance?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, we hope to assist relevant electors in updating their information by various means. As for the assistance mentioned by Dr LEUNG just now, I would like to request her to do me a favour by reminding the electors whom she comes into contact that their information must be updated before 29 June. The forms for updating information can be easily downloaded from the Internet or obtained from various District Offices.

If individual electors are not too clear about the procedure or whether their names will appear in the provisional register or the omissions list, they are welcome to call the hotline set up by the REO at 2891 1001. Not only can this

hotline facilitate members of the public in making inquiries, it can also enable them to communicate with colleagues in the REO for assistance.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

DR PRISCILLA LEUNG (in Cantonese): *The Secretary's reply ……*

PRESIDENT (in Cantonese): Please repeat your supplementary question.

DR PRISCILLA LEUNG (in Cantonese): *The Secretary has not answered the point regarding those persons who are just ignorant or simply have no way to know the telephone number provided by the Secretary just now …… the person I mentioned just now happened to bump into me and I have no responsibility …… I happened to run into a member of the public and so I was able to offer him assistance, but the Annex reveals that the number of persons involved is around 250 000. Will the authorities take the initiative to provide any assistance? Regarding those who have not replied to the inquiry letters, will the Government have an additional procedure to give them one more chance to retain their voter qualification?*

PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, we will communicate by various means with the 250 000-odd persons who have not replied to us. In particular, should multiple electors or multiple surnames of electors at one registered residential address be found and should they fall under the random sampling checks category, we have actually sent them two letters. In other words, if we do not receive any reply to the letters we sent to them by ordinary post for information, or if our letters are undelivered, we will send inquiry letters to them by registered post.

The point is if these electors can still not be contacted by these means, the ERO will act according to the requirements in law. If he is satisfied on reasonable grounds that these electors no longer reside in their original addresses, he will have to include them in the omissions list. Hence, we have appealed to the relevant electors through various channels to update the information on their new addresses, so that their names can be included in the final register of electors to enable them to cast their ballots in the upcoming election.

MR IP KWOK-HIM (in Cantonese): *Such information is quite alarming since 250 000 persons might be included in the omissions list for the upcoming election. Certainly, the Government has listed the figures in detail in the Annex. But still, I have received a case and hope the Secretary can give me a reply. I was told by a woman living in a private building that she had been requested by the REO to provide address proof. Since she is living in a private building, her address cannot be verified through government departments, as mentioned by the Secretary earlier. However, she has not registered for any electricity or water account. Neither can she produce other correspondence as proof of her residential address. Although she has telephoned the REO, the reply she received is that she cannot retain her voter qualification if she cannot produce any proof.*

Under such circumstances, how can this woman, who has been residing in the private building, resolve the problem to ensure she can continue to enjoy the right to vote?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): The address proof requested by the REO in its inquiry letters include the following categories: First, electricity, water and gas bills; second, the correspondence issued by the SAR Government, including demand note for tax, rates, and so on; and third, written documents issued by banks, credit card companies, insurance companies or other recognized organizations, such as monthly statements. For any person who does not have address proof to provide, the REO will also accept the address proof of another inhabitant who resides at the same address. But that inhabitant should furnish a signed declaration to prove that they reside at the same residential address.

For any person who finds it inconvenient to provide the aforesaid proof, he may make a simple statutory declaration before a Commissioner, a solicitor or a Justice of the Peace for oaths to confirm that the address information he provides is correct. I hope the five or six channels mentioned above can help resolve the problems caused by the circumstances mentioned by the Honourable Member. In particular, a person without address proof may request another inhabitant who resides at the same address to produce proof or provide the required information through declaration.

MS AUDREY EU (in Cantonese): *President, I am similarly concerned about more than 200 000 electors being put on the omissions list. I urge the Government to conduct a thorough inquiry, or else the consequences can be very serious.*

President, my supplementary question concerns part (c) of the main reply. It is evident that the number of complaint cases against "vote rigging" is quite large, with 2 000-odd cases referred by the REO, 1 500-odd cases handled by law-enforcement agencies, as well as cases referred to the ICAC for investigation. Nevertheless, we can see that the number of prosecuted or convicted cases is very small, with only 16 persons arrested by the HKPF and 15 others prosecuted by the ICAC.

May I ask if the Bureau has completed the investigations into all cases and found no problems with other cases or whether the Bureau has failed to complete the investigation in time? According to the Regulation (Cap. 541A), the investigation can only be conducted within a six-month period, but six months have already passed now. May I know whether the Bureau has completed the investigation and found no problems within six months, or it has failed to complete the investigation in time? In particular, it is pointed out in many reports that some people with clout are not arrested, and persons who are convicted might just be at the front line. Is the Government sparing those who are really influential and controlling everything behind the scene?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, of the 9 940 suspected false address cases arising from the

2011 DC Election, the REO has, after investigation, issued inquiry letters to 6 470 persons involved, as spelt out in the Annex to the main reply. In other words, of the 9 000-odd cases, the REO considers 6 000-odd cases warrant further actions and inquiry letters should be issued. Insofar as the 6 470 inquiry letters issued are concerned, we have already received 2 300 replies, but still 4 170 persons have not yet replied to us. Just as dealing with other cases with no replies received, the REO will include these 4 170 persons in the omissions list.

President, perhaps I should add one more point. Late last year, there was a major concern in the community about the integrity of the register of electors and the authenticity of the information therein. Attention of the highest degree was paid by the Legislative Council to this matter, too. We have indicated on various occasions, including at Council and panel meetings, that the Government hopes to take measures to ensure the accuracy of the register of electors.

Having regard to our discussions and the public consultation already held, the Government has launched a series of measures starting from January this year. Consequently, 200 000-odd voter registrations might need to be included in the omissions list in accordance with the statutory procedure. Nevertheless, this does not mean that there are no further channels to deal with these 200 000 electors again. As I mentioned just now, we still hope the 250 000 electors who have not updated their information can do so expeditiously before 29 June.

In fact, we have sought to get into touch with them through the REO and urge them through the media to update their information expeditiously. We will seize the remaining time and continue to urge them to do so expeditiously in June, in the hope that electors with accurate addresses can reply to us expeditiously to ensure they can cast ballots in the upcoming election.

Nevertheless, many persons in the register of electors might have already moved. If they have not updated their addresses, coupled with the concern expressed by a number of Members about the so-called "vote rigging" problems, the Government must deal with their cases in strict accordance with the statutory procedure. If there are indeed instances of non-compliance with the existing legislative requirements, we have to include the names of the relevant electors in the omissions list.

PRESIDENT (in Cantonese): We have spent more than 23 minutes on this question. Third question.

Primary School Places in North District

3. **MR CHAN HAK-KAN** (in Cantonese): *President, I have recently received requests for assistance from several parents and school principals in North District, pointing out that due to insufficient Primary One (P1) places in the district, quite a number of school children need to attend school in other districts, thereby causing inconvenience and danger to them. They have also pointed out that in addition to the continuous increase in population in the district, another factor attributing to the insufficiency of P1 places is that quite a number of school children originally receiving pre-school education on the Mainland choose to attend primary school in Hong Kong, and thus intensify the competition for school places. Although the Education Bureau has recently permitted additional intake of students by the primary schools in the district as an alleviating measure, it has not allocated additional resources to the schools concerned. In this connection, will the Government inform this Council:*

(a) of the numbers of P1 school children living in North District who had been allocated primary school places in other districts in each of the past five years, and the respective percentages of such numbers in the total numbers of school-age children in the district; the anticipated changes in the relevant figures in the coming five years (set out the information in table form);

(b) whether it will consider constructing new primary school premises in the district or permitting school sponsoring bodies to use existing vacant school premises to operate schools expeditiously, as a mid-term or long-term measure to alleviate the problem of insufficient school places; if it will, of the details; if not, the reasons for that; and

(c) of the expected increase in intake of students by the primary schools in the district in the 2012-2013 school year; whether it has assessed the impact of increased intake on the quality of teaching and

learning; whether it will, for this reason, allocate additional resources and manpower to the schools concerned to help alleviate the pressure on their teaching staff; if it will, of the details; if not, the reasons for that?

SECRETARY FOR EDUCATION (in Cantonese): President, firstly, I would like to reiterate that the Administration will ensure the provision of sufficient public sector school places for children eligible for receiving education in Hong Kong. In view of the demand for school places from children born in Hong Kong to Mainland women and returning to Hong Kong for education (including cross-boundary students) in recent years, we have increased the provision of school places through flexible measures as far as possible to ensure sufficient school places for local children. My reply to the three-part question raised by Mr CHAN is as follows:

(a) The numbers of Primary One Admission (POA) applicants residing in North District but allocated primary school places in other districts at the Central Allocation stage in the past five years, and the percentages of such applicants in the respective years are listed at Annex.

In estimating the future demand for public sector primary school places in North District, the Education Bureau will make reference to the school-age population projections, which are compiled based on the population projections updated regularly by the Census and Statistics Department, and take into account the actual numbers of existing students at various levels and the latest demographic changes (including the number of cross-boundary students) so that relevant measures can be formulated to meet the demand. Since the actual demand for school places mainly depends on the school-age population and parental choices, and it is difficult to predict with any accuracy the increase in cross-boundary students, in particular year-on-year changes, the Education Bureau will not prematurely provide projections on the number of P1 students residing in North District but allocated school places in other districts in the next few years.

(b) In meeting the demand for P1 school places in North District, we have already formulated medium- and long-term measures to increase the supply of school places. For medium-term measures, we are actively carrying out works for addition of classrooms in four existing primary schools in North District. We anticipate that the works can be completed in the 2013-2014 school year. We will also look for suitable vacant school premises that may be recycled for school use in North District so as to cater for the short-term needs of existing schools for additional classrooms. However, the feasibility of recycling vacant school premises and the lead time required for constructing new school premises depend on a number of factors, including land status of the site concerned, transport network in the vicinity and facilities available in the premises. It should be noted that most of the vacant school premises in North District are ex-rural school premises, most of which have only a limited number of classrooms and are remotely located. We are conducting feasibility studies on the existing vacant school premises. If any of them is found suitable, we will arrange allocation in accordance with the established procedures and relevant land policies.

Since a typical school building project will take six years to complete and require substantial resources, such projects should tie in with the future development of the districts concerned and hence are considered long-term measures. We have already started the planning of a primary school project at Area 36 of Fan Ling with a view to reprovisioning existing primary schools. Before conducting the school allocation and seeking financial resources for the school building project, we have to review the long-term development and demand in North District to ensure the effective use of land and public resources. We would not hastily build new school premises in the face of short-term demand so as to avoid keen competition for student intake among existing schools in the district or even under-enrolment when there is a change in the student population.

(c) Under the existing allocation mechanism, we will increase the number of operating classes or allocate more students to each class when necessary to cope with changes in the demand for school places from year to year. In the 2012 POA exercise, we have allocated two more students to each P1 class in all the 26 schools in Net 80 and Net 81 of North District. In other words, the numbers of P1 students per class in schools implementing Small Class Teaching and in other schools are 27 and 32 respectively. As the number of students allocated to each class is still within the enrolment cap, the quality of teaching and learning should not be affected. I have to stress that allocating additional P1 students to each class is only a temporary measure. As such, no additional resources will be provided.

For schools in the district that will operate additional P1 classes by making use of vacant classrooms or other rooms in the 2012-2013 school year, the amount of operating expenses block grant and teaching staff entitlement will be determined according to the total number of operating classes under the established mechanism.

Annex

POA from 2008 to 2012
Applicants residing in North District
but allocated primary school places in other districts
at the Central Allocation stage

Year of POA	*POA applicants residing in North District but allocated primary school places in other districts at Central Allocation stage* *	*% of POA applicants residing in North District but allocated primary school places in other districts at Central Allocation stage*
2012	145	6.6%
2011	84	3.8%
2010	46	2.2%
2009	26	1.2%
2008	0	0

Note:

* The figures include applicants who chose schools in other districts.

MR CHAN HAK-KAN (in Cantonese): *President, now there are only 3 600 P1 places in Sheung Shui or North District. But according to information obtained or known, the number of cross-boundary students already amounts to some 1 400 persons. Although the Education Bureau has implemented many measures in this respect, they are found to be ineffective, evident in the results of the Central Allocation released last Saturday. I received as many as 80 complaint cases in the morning about students in the North District who were allocated school places in other districts.*

May I ask the Secretary whether he would model on the practice adopted by the Hospital Authority by instructing schools to stop admitting the "doubly non-permanent resident" school children so that local students in North District will be given priority in school admission? If not, would this be a contravention of the current government policy of arranging for school children to go to schools in the vicinity of their homes?

SECRETARY FOR EDUCATION (in Cantonese): Members should understand that the problem we face is one of an insufficient supply versus a strong demand. Both the numbers of school children in North District and the number of cross-boundary school children are far more than the number of school places currently provided by schools in North District. We have undertaken a study on this and found that there are some obvious cases of school children having to go to schools in other districts. An example is that the residential addresses of some student are in Shenzhen while the residential addresses of some cross-boundary students are in Hong Kong. And all these students are permanent residents of Hong Kong. So in this regard, we have our own difficulties in that it is not that easy to tell the difference between the two. What we are doing is to provide more school places in North District under the existing mechanism and a detailed response is given in the main reply.

However, this cannot solve the problem completely and we have to borrow places in other districts. This move will certainly result in some students having to go to school in another district. I hope those cross-boundary students can understand that we in Hong Kong are facing great difficulties and we want to

avoid the situation all students flocking to schools in North District. Actually, they have other options and they can come to Hong Kong through other boundary control points. For example, that they can avoid using the control point at Lo Wu to go to a school in North District and instead they may use the Lok Ma Chau control point or other control points to go to a school in Tuen Mun or Tin Shui Wai. If they can choose schools in these areas, that would be able to ease the problem in this respect.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MR CHAN HAK-KAN (in Cantonese): *President, I asked the Secretary whether or not it was possible to give priority to local students in North District to go to primary schools in North District and admission requests from those "doubly non-permanent resident" school children would only be entertained when surplus places were available. But the Secretary did not give a reply to that point.*

PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR EDUCATION (in Cantonese): I have just said that sometimes it is not that easy to tell who local residents are and who cross-boundary students are. This is because their documents do not carry any clear indication on that and we can only try to know from the residential address given by them. Of course, the principle we go by is to attend to the needs of local students first in most cases and that is our priority. So the main reply also shows that in most cases, local students can be given priority and the proportion of students among the local students from North District allocated school places in other districts is not that high.

MR IP WAI-MING (in Cantonese): *President, the reply given by the Secretary is really disappointing. It seems that he has adopted a free-fall policy, trying to brush aside the matter simply by saying that the demand outruns the supply. He is trying to say that the authorities have done their best. This gives me an impression that he is trying to shirk his responsibility.*

It can be seen from the main reply that the number of school children who have to go to schools in other districts has been rising year on year. First, it seems that the Education Bureau does not have any plans regarding those "doubly non-permanent resident" school children who come to study here for schooling. Second, though the Bureau knows very well that the number of this kind of school children is on the rise, it does not want to put in more resources and build more schools in North District to take in these students other than increasing a few places in each class.

With more students allocated to the classes, will the problem be solved ultimately? Can the Secretary tell us clearly whether the authorities will try to gain some understanding of the kind of difficulties faced by the parents of local students living in North District currently? Will the authorities give priority to solving the problem of local students having to attend schools in another district and offer them some specific assistance?

SECRETARY FOR EDUCATION (in Cantonese): President, I hope Members can understand that we can certainly know the number of these "doubly non-permanent resident" students. We have a good grasp of the number of births of each year and the number of students studying in P1. The problem is, however, that although we know very well the number of these "doubly non-permanent resident" students, we have no way to know how many of them will eventually come to Hong Kong for schooling. This is the kind of information we have not been able to get hold of all along. We know the exact number of such students only when they actually come here for schooling. Moreover, the number of these "doubly non-permanent resident" students is always on the rise, so I believe the situation can be eased hopefully after the Government of the new term has recently called a halt to it.

The problem we used to face is that although we know the number of these students, we do not know how many of them will come here for schooling, hence it is difficult to undertake any planning. As evident in the Annex of the main reply, applicants residing in North District but allocated primary school places in other districts at the Central Allocation stage keep on growing like a geometrical series and it is not that easy at all to know in advance the actual numbers of each year. We have tried our best to increase the supply of school places, for example, as stated in the main reply, by allocating two more students to each class, and so on. This is a relatively easier method. As for other initiatives such as building more classrooms, we are proceeding with these and so we are trying our best to tackle the problem.

PRESIDENT (in Cantonese): Mr IP, has your supplementary question not been answered?

MR IP WAI-MING (in Cantonese): *President, I think that the reply given by the Secretary is really irrelevant. I have just said that he has ……*

PRESIDENT (in Cantonese): Please repeat your supplementary question.

MR IP WAI-MING (in Cantonese): *I asked whether the authorities had tried to understand what kind of problems local parents encountered when their children were allocated school places in other districts. Have the authorities made an attempt to learn about the situation and offer concrete help to these parents solve the problems they face when their children have to attend schools in other districts? President, his reply is irrelevant, and it is not a reply at all.*

PRESIDENT (in Cantonese): Secretary, the Member asks about the difficulties encountered when students have to attend schools in other districts.

SECRETARY FOR EDUCATION (in Cantonese): The major difficulty encountered by parents when their children have to attend schools in other districts is transportation. In this regard, we will try our best to allocate their children to schools close to their homes. As for transportation needs, we can explore if there is any school bus service which can bring their children directly to the doorsteps of the schools and so prevent them from having to take more than one means of transport. These are the things we can do.

MR WONG SING-CHI (in Cantonese): *President, this is most ridiculous. Our Education Bureau can be regarded as a bureau with "three have-nots": it does not have any moral scruples, capabilities and sense of responsibility. It is unscrupulous in that the Bureau allocates students from North District to schools in Tai Po while students from Tai Po are prevented from being allocated to their favourite schools there because of the influx of students from North District ……*

PRESIDENT (in Cantonese): Mr WONG, please do not make lengthy comments.

MR WONG SING-CHI (in Cantonese): *President, I have just begun my speech but the two Members before me have talked for a few minutes, but I did not see you stop them.*

PRESIDENT (in Cantonese): They were asking questions, but you are making comments.

MR WONG SING-CHI (in Cantonese): *President, I was doing that because I wanted to set the base for my supplementary question. For if not, I am worried that the Secretary will not know what I am talking about.*

PRESIDENT (in Cantonese): Please raise your supplementary question as soon as possible.

MR WONG SING-CHI (in Cantonese): *This is because the Secretary did not give a relevant reply to those supplementary questions asked by the last two Members.*

What is so incompetent about the Bureau is that this problem does not begin today and we have long since reminded the Bureau of the problem and the Bureau knows that many Mainland students will come here for schooling but it has no sense of responsibility at all.

May I ask the Secretary, if additional classrooms are to be built now, how can this meet the needs of the students? The number of this kind of students will certainly increase over the next five or six years and by that time, as many as more than 1 000 students will have to attend schools across districts. May I ask the Secretary, apart from the question of whether the current initiatives can ever meet the needs of these students promptly, whether he has ever thought about the possibility of asking Secretary Raymond TAM to go to the Mainland and conduct a relevant study in order to ascertain the number of these "doubly non-permanent resident" students on the Mainland who will attend schools here and hence make some long-term and practicable arrangements or planning regarding school places? Did the Secretary ever consider that and will he do that in future?

SECRETARY FOR EDUCATION (in Cantonese): President, this is of course the issue we obviously have to consider and we would certainly do it, would we not? But the question is that this number fluctuates and if efforts are made to adjust the policy concerned, the effect might be futile. So if we are to take a rash step of building many schools and when the number of these "doubly non-permanent resident" students decreases or even comes to zero in six or seven years' time, what are we going to do with these schools? By that time there might be a situation where no students are found in these schools. This is a problem we have to consider.

The best way is probably like what we are doing now and that is, making flexible arrangements with the present number of schools and allocating some more students to each class. Actually, this has been the method used to tackle the problem of changes in population over the past years and that applies not only to people coming from outside the territory but also to demographic changes within the territory. With respect to the distribution of school children in Hong Kong, it is really not possible to come to the ideal situation of all the students in every district being allocated places in that district. So there are some surplus places in various districts territory-wide to meet the needs of this fluctuation in the number of school children. In certain districts, we will take such an approach every year and this is not something that is introduced only during the past few years; it is really a well-established practice.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MR WONG SING-CHI (in Cantonese): *President, the Secretary has not answered it, and it really kills me to hear that ……*

PRESIDENT (in Cantonese): Please repeat your supplementary question.

MR WONG SING-CHI (in Cantonese): …… *I asked him whether he had ever conducted any study on the issue and whether he would do so in future in order to gauge the situation of these "doubly non-permanent resident" students coming to Hong Kong for schooling. It really beats me as to the non-reply he has given.*

PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR EDUCATION (in Cantonese): President, I am sure Members are very familiar with the practice taken and, that is, to conduct questionnaire surveys, asking the parents of these "doubly non-permanent resident" students whether they intend to come here, when they will come and will they come at all, and so on. That is about all. This is a survey on their intentions. We can derive some percentages from the data obtained and these are discussed every year. But are these data accurate enough? It is because other factors need to be considered as well, like when they will actually come here, the number of people coming, and so on, before we can do anything. As for all the other data concerned, we have studied them but there seems to be still room for improvement.

MR WONG YUNG-KAN (in Cantonese): *President, regardless of whether we call these students cross-boundary students or "doubly non-permanent resident" students, the greatest problem now is that local students living in places like Tai Po and Sheung Shui are allocated to schools outside the districts where they are living while students from the Mainland are allocated to schools in North District, Tin Shui Wai and Yuen Long and such like places and the number of this kind of students is increasing. Has the Government ever considered providing these cross-boundary students from the Mainland some kind of feeder transportation service so that local students can study in schools in their own districts while those cross-boundary students can make use of the feeder transportation service to go to schools in other districts? I think that this will at least solve the problem of students having to look for school places everywhere but remaining unable to attend schools in the districts where they are living. Has the Government ever thought of making some policy changes?*

SECRETARY FOR EDUCATION (in Cantonese): President, there is nothing new about this idea and we have always been doing this. We have been sending this message to the parent associations of schools in Shenzhen and other relevant parties about this arrangement regarding cross-boundary students. Moreover, there are other control points linking up Shenzhen and other places as well as

places like Yuen Long, Tuen Mun and Tin Shui Wai as mentioned by Mr WONG and there are fast and convenient passings for these cross-boundary persons.

However, the problem is that people living in Shenzhen may not be able to go to certain more remote places in Hong Kong in a direct manner. In this respect, we have feeder transportation service such as special bus lanes in Shenzhen and special lanes at other control points to facilitate cross-boundary vehicles in coming here in an orderly manner. Now each of our boundary control points has a capacity of handling 13 000 travellers and this can serve the purpose of diverting the heavy passenger flow during the two or three peak time-slots for these incoming students when they go to school. We will continue to maintain these measures in future in the light of the circumstances.

PRESIDENT (in Cantonese): We have spent 23 minutes and 30 seconds on this question. Fourth question.

Political Liaison Conducted by Political Assistants

4. **MS AUDREY EU** (in Cantonese): *President, the Government further developed its Political Appointment System in 2008. Under the Political Appointment System, one of the functions of Political Assistants is political liaison. In this connection, will the Government inform this Council:*

(a) of the respective number of times that the Political Assistants of various Policy Bureaux had in the past four years liaised with the 13 political groups to which Legislative Council Members belonged (including the Democratic Alliance for the Betterment and Progress of Hong Kong, the Democratic Party, the Civic Party, the Economic Synergy, the Professionals Forum, the Hong Kong Federation of Trade Unions, the Hong Kong Confederation of Trade Unions or the Labour Party, the Liberal Party, the League of Social Democrats or People Power, the Neighbourhood and Worker's Service Centre, the Hong Kong Association for Democracy and People's Livelihood, the New People's Party and the Federation of Hong Kong and Kowloon

Labour Unions) and with other independent Members, with a breakdown of the figures in table form;

(b) of the respective titles and details of the activities attended by the Political Assistants of various Policy Bureaux in the past four years for the purpose of liaising with the 13 political groups to which Legislative Council Members belonged as mentioned in part (a) and with other independent Members, with a breakdown of the information in table form; and

(c) given that to date, the Government has not reviewed the functions and the work efficiency of Political Assistants since it further developed the Political Appointment System in 2008, whether the Government will conduct a comprehensive consultation on the issue; if it will, of the timetable; if not, the reasons for that?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, our reply to the questions raised by Ms Audrey EU is as follows:

(a) and (b)

The day-to-day work of the Political Assistants covers various areas. The Political Assistants are mainly responsible for providing Principal Officials with political analysis and advice, drafting documents and speeches for the Secretaries of Departments, Directors of Bureau and Under Secretaries, and conducting a wide range of political liaison, including assisting in strengthening the communication and working relationship between the Government and the Legislative Council. Since assuming office, the Political Assistants have been committed to assisting the Secretaries of Departments, Directors of Bureau and Under Secretaries in securing support from different parties and independent Members for the policy proposals, bills, and funding applications submitted by the

Government. They have undertaken various forms of exchanges and working meetings with different parties and independent Members from time to time to discuss different policies and topics of interest.

Apart from liaison with the Legislative Council, the Political Assistants also conduct political liaison at the following levels:

(1) At the district level, the Political Assistants attend District Council (DC) meetings to explain government policies and principles, and to secure support from the DCs for government projects in different districts. They also maintain regular communication with DC Members and community representatives, carry out community visits, and take part in district functions.

(2) In respect of liaison with stakeholders, the Political Assistants maintain frequent communication and close working relationship with the stakeholders. They attend forums, seminars, and working meetings organized by these stakeholders or the Government to explain government policies and principles. These stakeholders include youth organizations, labour unions, professional bodies, pressure groups, non-governmental organizations, research institutes, and schools; and

(3) In respect of media and public liaison, the Political Assistants maintain frequent communication with the media; attend television or radio programmes, and conduct media interviews to explain government policies and principles to the community. They also maintain liaison with various sectors of the community by attending open forums hosted by the Government, political parties and other organizations, and by interacting with members of the public through online channels.

As far as parts (a) and (b) of the question raised by Ms Audrey EU are concerned, the Political Assistants conduct regular liaison with political groups and independent Members on a daily basis. The liaison is conducted in different forms and on different occasions, including through day-to-day contacts, telephone calls, email and letter exchanges, working meetings, tea gatherings and lunches/dinners, and attendance at relevant public and internal activities. In this regard, it is difficult for the Government to record and provide an account for every act of liaison conducted by the Political Assistants with political groups and independent Members in various forms.

(c) In conducting the mid-term review of the remuneration for Under Secretaries and Political Assistants in 2010, the performance of each of them was appraised. The performance of the Political Assistants was assessed mainly on their effectiveness in tendering political analyses and advice to their supervising Principal Officials, as well as in political liaison work. Having considered the appraisal and review reports, the Appointment Committee considered that the performance of each of the Political Assistants generally met the requirements.

Nevertheless, the political and social environment of Hong Kong has been evolving quickly over the years. It is envisaged by the current Administration that the politically appointed officials collectively will have to devote a higher proportion of their time and effort to political work at all ranks of politically appointed officials. It is expected that the Political Assistants in particular can have their roles modified to be more active and prominent in the public arena. In putting forth improvement proposals regarding the Political Appointment System, the Chief Executive-elect mentioned that the politically appointed officials serving in the next-term Government should reach out to the community more actively.

In this regard, it is expected that the duties of the Political Assistants serving in the next-term Government will shift from back-stage

analyses and co-ordination or behind-the-scene lobbying to external liaison and lobbying, as well as community affairs.

The Chief Executive-elect has undertaken to conduct an interim review of the Political Appointment System after gaining operational experience and put forward proposals to further improve the Political Appointment System.

MS AUDREY EU (in Cantonese): *President, after reading the Secretary's reply, I really do not know whether I should be angry or laughing at it. President, I particularly wish to draw your attention to part (c) of the Secretary's main reply in which he said, "Having considered the appraisal and review reports, the Appointment Committee considered that the performance of each of the Political Assistants generally met the requirements.". I think the performance of the Political Assistants is considered satisfactory by no one in Hong Kong but the Government.*

President, I wish to point out that Mr Alan LEONG asked another question about the number of times that Political Assistants had spoken when they attended meetings of the Legislative Council and DCs. President, we asked the authorities to provide the figures in tabulated form and the Secretary provided such a table at that time. Of the nine Political Assistants, six had attended meetings of the Legislative Council and DCs for no more than 20 times or barely over 20 times in the past four years — These are the figures for the past four years, which means a mere five times a year. This refers only to their attendance at meetings, and the number of times that they had spoken is zero, as the Secretary said that they do not have such records. President, I wish to tell Members and the Government that the studies conducted by a non-governmental think-tank, SynergyNet, have set out the number of times that they had spoken but of course, these Political Assistants had attended a pitifully small number of meetings and the number of times that they had spoken is even zero, and the statistics of the Under Secretaries are not any better either.

President, in this question I asked about another area of work, which is liaison with political parties, but he dared not provide the information in

tabulated form. What did the Secretary say in his reply? He said that it is difficult to record every act of liaison because they conduct regular political liaison work every day. He sounded as if they had done so much that giving a full account of such work would be impossible. However, I think the political parties of Members who are in this Chamber now all know about this, or at least I can say on behalf of the Civic Party that the Political Assistants have hardly ever contacted us in the Civic Party or liaised with us. How can this be possible? In view of this, my question to the Government is: As Secretary Raymond TAM is now promoting the next-term Government and seeking our approval for increasing the manpower of Political Assistants in the new ruling team — I have made the calculation for you and found that as Under Secretaries, Directors of Bureau and Secretaries of Department can use funds for taking on a total of 17 Political Assistants, and if we do some computation on the basis of each one of them being remunerated at $100,000 monthly, this would incur an expenditure in excess of $100 million in just one term of the Government. With such performance of these Political Assistants, how can you come to the Legislative Council to seek our approval for a provision of close to $100 million for the next-term Government to recruit even more Political Assistants?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, perhaps let me provide some supplementary information first. As we mentioned in our written reply to a question raised by a Member last week, Political Assistants are, by their job nature, responsible principally for providing support to the Secretaries of Department, Directors of Bureau and Under Secretaries and so, it was clearly stated in the reply that their attendance at meetings of the Legislative Council and DCs might not be officially included in the list of the Administration's attendance. The statistics that we provided last week, therefore, do not fully reflect their actual attendance. We stated this point in our reply last week. This is the first point that I wish to add.

Second, I think over the past few years, apart from providing support to the work of the Secretaries of Department, Directors of Bureau and Under Secretaries as I have said in the main reply just now, Political Assistants also have to make a lot of contacts with stakeholders in the policy areas within their purview. For example, I understand that the Political Assistant of the Labour and Welfare

Bureau has liaised with many organizations in the community, and apart from conducting liaison with organizations to take forward work in various aspects, such as matters relating to the legislation on domestic violence, public transport fare concession scheme, minimum wage, and so on, the Political Assistant of the Labour and Welfare Bureau has also exchanged views with many Members. Another example is the Work Incentive Transport Subsidy Scheme that I have just mentioned. The Political Assistant concerned has attended many meetings held by district groups and non-government organizations. Moreover, I understand that the Political Assistant of the Education Bureau has maintained communication with many education organizations and schools, and visited many schools to conduct exchanges with students. The Political Assistant of the Home Affairs Bureau, for instance, also has a lot of involvement in district administration, and apart from taking part in summit meetings or consultation on licensing, he has also participated in the Youth Summit and exchange sessions, and liaised with many youth organizations. Also, they often attend DC meetings, residents' meetings, and so on. The examples that I have just cited reflect the situation over the past few years.

However, as also pointed out by the Independent Commission chaired by Mr Vincent CHENG, the objective fact is that the public do not know the Political Assistants sufficiently well and as the job nature of Political Assistants has confined them largely to providing back-stage support, the Independent Commission considers that the remuneration for Political Assistants can be lowered in the next-term Government. The current-term Government has taken this view on board and proposed, after consultation with the Office of the Chief Executive-elect, to lower the remuneration for Political Assistants under the current reorganization proposals to a level that should be capped at $100,000 per month. I personally think that this has, to quite a large extent, positively responded to the criticisms and views in society over a certain period of time about whether the overall levels of remuneration for Political Assistants are on the high side.

Moreover, as we also mentioned during the discussion on the reorganization proposals, it is envisaged that the Political Assistants will more often come onto the front-stage in their work in the coming term, and they will be required to devote more efforts to district work by, among other things, attending

more DC meetings and activities organized by community organizations and communicating with the public through various networks, including the new media. We hope that this can enhance the transparency of the work of Political Assistants, so that members of the public can have more opportunities to see them. In turn, this will enable Directors of Bureau and Under Secretaries to more effectively grasp public sentiments in the districts and have more opportunities and channels for communication. I hope Members can understand that the Government will carry out work to make improvements in the light of Members' concerns.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MS AUDREY EU (in Cantonese): *President, he has not answered it.*

PRESIDENT (in Cantonese): Please repeat your supplementary question.

MS AUDREY EU (in Cantonese): *President, I have actually asked this question in the main question, as I asked about the number of times the Political Assistants had attended public forums and the nature of the activities attended by them, and I also asked the Government to provide a breakdown of such information. Instead of setting out the information, the Government only gave an account of the information verbally. President, my question is: If the Government cannot even provide such simple records or appraisals of their performance, on what ground can the Government convince us that their overall work performance met the requirements? The proposal to lower their remuneration already shows that they do not meet the requirements.*

PRESIDENT (in Cantonese): Ms EU, if you have repeated your supplementary question, I will ask the Secretary to give an answer. Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, as we said in the written reply last week, in addition to the statistics on their attendance at meetings of the Legislative Council and DCs, the table also includes a column setting out the records of the attendance of the nine Political Assistants at public forums. For instance, with regard to the Political Assistant of the Home Affairs Bureau whom I have just mentioned, the table shows that he had attended 131 public forums, whereas the Political Assistant of the Labour and Welfare Bureau and the Political Assistant of the Education Bureau had attended about 68 and 177 public forums respectively. Such information has been set out in the table provided by us last week for deliberation by this Council.

MS AUDREY EU (in Cantonese): *In my question I asked him to provide the information in tabulated form. He did not provide it and in this reply ……*

PRESIDENT (in Cantonese): Ms EU, the Secretary already explained in his reply why the information cannot be provided in tabulated form. If you are not satisfied with it, please follow it up through other channels.

MS AUDREY EU (in Cantonese): *President, I am dissatisfied with his reply which has not given me an answer regarding the number of times that they had attended public forums and activities held by political parties, because it is their duty to conduct political liaison. Will the Secretary provide supplementary information after this meeting?*

President, part (b) of my question asked about the titles and details of the activities attended and now, it seems ……

PRESIDENT (in Cantonese): Ms EU, the Secretary already explained in the main reply why he did not provide these statistics. Let me see if the Secretary has anything to add.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I really have nothing to add further, because this type of contact is a bit different from their attendance at public forums and DC meetings in nature, and as these exchanges are conducted rather frequently, we sometimes do not keep records of each of these occasions. Even in the case of Directors of Bureau, I myself will find it difficult to record the number of times that I have conducted exchanges with Members through those channels mentioned just now and give an account of these occasions one by one. If Members ask me for how many times I have liaised with political groups in my capacity as a Director of Bureau, I think it will be difficult for me to keep these records. I hope Members can appreciate this difficulty we face in actual operation.

MR ALBERT HO (in Cantonese): *President, as Ms Audrey EU said earlier on, it seems that the political parties in the democratic camp do not have a deep impression of — not to mention liaison on a regular basis — how many times the Political Assistants have liaised with us or contacted us on their own initiative to carry out lobbying. I would not say that they have never done so, just that they have done it really very scarcely. So, we really do not remember exactly to which Bureau a certain Political Assistant belongs and who the Political Assistant is in which Bureau.*

But the biggest problem is that insofar as the front-stage work is concerned, the public do not have the feeling that they have performed well, whereas in respect of back-stage work, there should be statistics showing us how they have performed but the authorities have failed to provide comprehensive and adequate statistics to enable us to make an assessment of the nature or effectiveness of their work.

Therefore, President, now that this system has already been implemented for some time, and the Chief Executive-elect seems to be using the salary structure for his future ruling team to tell us that they do not deserve to be remunerated at the present level. Under the proposal, the monthly remuneration for Political Assistants is lowered to $100,000 — $100,000 is the maximum salary point which used to be $160,000. Back then, some people were already questioning whether they were hired to do photocopying work or what exactly their duties would be. The Chief Executive-elect is now saying that the

monthly remuneration for Political Assistants will be capped at $100,000, or they can even be paid at $10,000, meaning that their monthly salary will range from $10,000 to $100,000. What kind of job is it that the salary can be lowered in this way and that it can be split into jobs with a salary being lowered to $10,000 at the lowest? What exactly is this job?

PRESIDENT (in Cantonese): Please state your supplementary question.

MR ALBERT HO (in Cantonese): *So, Secretary, please tell us frankly whether you are admitting that Political Assistants are basically dispensable. In fact, if a large part of their duty is to assist the work of the Directors of Bureau or Under Secretaries, this can already be achieved in the existing Civil Service establishment. This post can absolutely be deleted, and the Administration should rather spend the money on a more effective and more useful establishment.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, Mr HO's question consists of two parts, and I will try to answer them separately.

On the first part of his question, Mr HO mentioned that in the reorganization proposals of the Chief Executive-elect, the monthly remuneration for Political Assistants will be capped at $100,000. It is also proposed that if necessary, the Director of Bureau can have the flexibility to recruit more than one Political Assistants. This is also mentioned in the proposals. I also remember that the Head of the Office of the Chief Executive-elect once explained this on an occasion in the Legislative Council. She said that she believed what Mr LEUNG means is that even if a Bureau has recruited more than one Political Assistants, there will be no more than two or three Political Assistants altogether.

In respect of the actual salary level, I think this will be determined according to the education attainments, curriculum vitae, and relevant work experience of the Political Assistants. The current-term Government has an Appointment Committee to ensure consistency in their recruitment. I trust that

the next-term Government will make reference to the practice adopted by the current-term Government and put in place a mechanism to ensure consistency alike. This is my reply to the first part of the question.

In reply to the second part of the question, I would say that the Government works as a team, and politically appointed officials and civil servants certainly work also as a team, but as they are given charge of different duties, sometimes it may be more convenient to talk to the politically appointed officials because of their background. Take my Bureau as an example. During the past eight or nine months since I took up the office of a Director of Bureau, my Bureau has not recruited a Political Assistant, and in some circumstances, I would say that this type of support is indeed lacking. For example, during the meetings of this Council for the past five weeks or so, in order to cope with the filibustering on the Legislative Council (Amendment) Bill 2012 in which I had undergone quite a lot of struggles personally, I had sought the assistance of another colleague, who is the Special Assistant in the Office of the Chief Executive, in handling some back-stage political work for me. Therefore, I believe in performing their actual duties and functions, the Directors of Bureau very often need the support of Political Assistants in their work relating to the business of this Council.

Having said that, as I also mentioned in reply to a follow-up question earlier on, I noticed that the next-term Government would like the roles of the Political Assistants to be modified to a greater degree by increasing their involvement in district work. In this connection, I think as this Council will see its composition increased from 60 to 70, the political work in this respect will increase, and following the election of the Chief Executive by universal suffrage in 2017, the public will have increasingly high expectations of the geographical constituency elections and therefore, I think more and more efforts will have to be devoted to keeping tabs on public sentiments in the districts. In the coming term of the Government, Political Assistants will be able to provide assistance in this respect.

MR PAUL TSE (in Cantonese): *President, I think for people who have been lawyers for a long time and particularly major law firms all know that very often, it is necessary to record how much time is spent on each item, and this is basically some administrative work which is very much time-consuming. I have*

a particular question in mind and that is, I wonder if the many political parties are willing to make public the details of their discussions with the Government or what they have done with the Government.

This question has prompted me to ask the Secretary whether the Political Assistants have been required since the time of their appointment to keep full records of their meetings with Members and their contacts with the public. Despite that nowadays, and I believe Members will agree, the work performance of Political Assistants generally leaves a lot to be desired and their performance is considered highly unsatisfactory indeed, while it is necessary to balance the administrative needs or nature, should the Secretary put in place a record system and give consideration to keeping the relevant records in the light of the current political circumstances, just as records are currently kept of Members' questions and their attendance at meetings in that the number of questions asked by Members and the number of meetings attended by Members are recorded in an objective manner? This can at least maintain records for some most basic and most important meetings as well as the attendance of Members, so that when the public or Members ask for these statistics, the Government can provide the most basic reply.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, Mr TSE has mentioned several parts. First, the Administration did not require Political Assistants to keep records of their contacts with political parties and Members at the time of their appointment. We have not required them to keep these statistical records.

Second, insofar as I am personally concerned, political work is not so much about the number of times that such work has been carried out. Of course, we must be fully responsive to the requests of this Council and the public by attending meetings and activities of various scales, including meetings of DCs and district organizations. This is our obligation. However, it is impossible to tell the effectiveness of political work purely from the statistics. Sometimes we may have to conduct liaison for over 10, 20 or 30 times before our sincerity can convince Members to throw weight behind the Government's policies. Sometimes, it may be easier for us to take on board Members' views and

Members may more readily give their support to the Government and it will be unnecessary to meet with them many times.

Just as in the case of verification of the residential addresses of registered electors that we discussed in a previous question, we have had discussions with various political parties, including Members of the democratic camp, and if we can incorporate their views, our work in advocating policies in this Council will be carried out more smoothly, and the time and contacts required will also be less. But on the contrary, regarding the more controversial issues, such as the Legislative Council (Amendment) Bill 2012 some time ago, we have to attend many more meetings in this Council and spend far more hours on it. I think it all depends on the nature of work and the individual items of work. If we purely take the approach back in the times of the Industrial Revolution by just looking at the statistics in a mechanical manner, I personally think that this is not a way worthy of our consideration.

PRESIDENT (in Cantonese): We have spent close to 23 minutes on this question. Fifth question.

Sexual Harassment in Tertiary Institutions

5. **MS EMILY LAU** (in Cantonese): *President, the Coroner's Court has recently inquired into a case which involves an incident of a university staff member suspected of being sexually harassed by a high-ranking officer of the university. In May this year, the media again revealed that a staff member of that university had complained against her being sexually harassed by a high-ranking officer and expressed dissatisfaction about the university's approach in handling the incident. In connection with the system and approach adopted by University Grants Committee-funded institutions (institutions) in handling the problem of sexual harassment, will the executive authorities inform this Council whether they know:*

(a) the respective numbers of enquiries and complaints relating to sexual harassment received by each institution in the past three

years, together with the number of substantiated cases and the penalties imposed on the persons under complaint in substantiated cases; whether the various institutions had documented those cases known to them although the victims had not made any formal written complaint; if they had, the numbers of cases recorded by the various institutions;

(b) whether the various institutions have set up mechanisms to facilitate their assessment of the seriousness of incidents of alleged sexual harassment and to enable them to proactively launch investigation, if necessary, into such cases even in the absence of formal complaints from the victims or eyewitnesses; and

(c) the measures adopted by the various institutions to ensure effective implementation of their policies on prevention and handling of sexual harassment; the number and percentage of the heads and deputy heads of the institutions who have received training in handling sexual harassment, as well as the number of training hours; whether the management staff of the institutions who improperly handle or ignore incidents of alleged sexual harassment for the sake of reputation of the institutions or other considerations, thus making the victims refrain from lodging formal complaints, are subject to disciplinary actions of their institutions; which institutions allow the complainants to arrange the company of lawyers in attending internal hearings; and whether the committee or secretariat which handles sexual harassment complaints improperly or ignores such incidents is subject to disciplinary actions of its institution?

SECRETARY FOR EDUCATION (in Cantonese): President,

(a) From January 2009 to May 2012, a total of 30 complaints about sexual harassment were received by the eight University Grants Committee (UGC)-funded institutions, of which 11 were found substantiated upon investigation, seven were resolved through

conciliation with the consent of the complainants, four were dismissed, six were withdrawn on the complainants' initiative, and the remaining two are still under investigation. As for enquiries relating to sexual harassment, a total of 68 enquiries were received during the same period by four institutions. This figure includes those enquiries which have not led to formal complaints. The other four institutions have indicated that official statistics on enquiries relating to sexual harassment are not available since such enquiries can be made through different means. A breakdown of the figures by institution is set out at Annex.

For substantiated complaints, penalties may include written warning or reprimand, interdiction and termination of employment if the respondent is a staff member. If the respondent is a student, suspension or expulsion from the institution may be ordered in serious cases. If a criminal offence is suspected, the case will be referred to the police for further investigation, and the institution concerned will render full support during the investigation.

(b) The eight UGC-funded institutions are all independent and autonomous statutory bodies. According to the Sex Discrimination Ordinance (Cap. 480), these institutions, same as other organizations and bodies in Hong Kong, have a statutory obligation to take reasonable and practical steps to prevent sexual harassment on campus, including developing a policy in writing in this respect, setting up a mechanism to handle complaints about sexual harassment, and so on.

All eight institutions have informed us that they have put in place policies for the prevention and handling of sexual harassment cases, as well as complaint mechanisms and procedures, to ensure that every case will be dealt with in a serious and impartial manner. As for potential sexual harassment cases that are not brought about by formal written complaints but come to the knowledge of the institutions nevertheless, the institutions will take appropriate follow-up actions with due regard to the wishes of the alleged

victims, including initiating the complaint and investigation procedures and providing support and assistance to them.

(c) The management members of the institutions, including the heads and deputy heads, should handle sexual harassment complaints carefully in deference to the established policies of the institutions and the principles of fairness and impartiality. The institutions regularly arrange for their heads, deans, management, staff and even students to attend training courses, seminars and talks on how to prevent and handle sexual harassment, and invite the training officers of the Equal Opportunities Commission to deliver talks on campus. However, the institutions have indicated that they do not have any specific data on such training received by their heads and deputy heads.

The institutions also widely promote their policies and measures for the prevention of sexual harassment through different channels by regularly launching publicity and education activities on their campuses.

With their policies for the prevention of sexual harassment and mechanisms for handling sexual harassment complaints in place, the institutions do not allow their management staff to circumvent such policies and mechanisms or prevent any victims from exercising their rights to complain, or else they may be deemed to have abused office and breached the code of practice for staff, and hence liable for disciplinary actions. Similarly, the committee or secretariat responsible for handling sexual harassment complaints should deal with every case properly in accordance with the established procedures, otherwise they may be considered to have neglected their duties and subject to disciplinary actions too.

Under the complaint procedures of all eight UGC-funded institutions, both parties to a complaint case are allowed to be accompanied by members of the university (academic staff or students) at every hearing for advice and support. Three

institutions allow both parties to be legally represented at the hearings while four do not. For the remaining one, there is no such provision in its complaint procedures, and any request for legal representation will be considered by the committee concerned.

Besides, it should be noted that apart from complaining to the institutions, alleged victims of sexual harassment may also lodge a complaint with the Equal Opportunities Commission or bring civil proceedings in court. The internal complaint mechanisms of the institutions will in no way affect the alleged victims' rights to complain or litigate outside the institutions. For cases involving criminal offences, they will be referred to the police by the institutions concerned for further investigation.

Annex

Numbers of Complaints and Enquiries Relating to Sexual Harassment Received by University Grants Committee-funded Institutions From 2009 to 2012 (up to end of May)

Institution	*Number of Complaints Relating to Sexual Harassment Received*						*Number of Enquiries Relating to Sexual Harassment Received*[2]
	Substantiated	*Resolved by Conciliation*	*Dismissed*	*Withdrawn by Complainants*[1]	*Under Investigation*	*Sub-total*	
City University of Hong Kong	3	0	1	0	1	5	[3]
Hong Kong Baptist University	2	1	0	0	0	3	[3]
Lingnan University	0	0	0	0	0	0	[3]
The Chinese University of Hong Kong	2	5	0	0	0	7	24
The Hong Kong Institute of Education	2	1	1	0	0	4	2
The Hong Kong Polytechnic University	1	0	2	0	1	4	0

Institution	*Number of Complaints Relating to Sexual Harassment Received*						*Number of Enquiries Relating to Sexual Harassment Received*[2]
	Substantiated	*Resolved by Conciliation*	*Dismissed*	*Withdrawn by Complainants*[1]	*Under Investigation*	*Sub-total*	
The Hong Kong University of Science and Technology	1	0	0	2	0	3	[3]
The University of Hong Kong	0	0	0	4	0	4	42
Total	11	7	4	6	2	30	68[3]

Notes:

(1) These cases were withdrawn on the complainants' initiative.

(2) The figures include enquiries that have not led to formal complaints. As the methods of compiling statistics on enquiries may vary across institutions, it is not appropriate to directly compare the statistics of different institutions.

(3) Four institutions have indicated that official statistics on enquiries relating to sexual harassment are not available since such enquiries can be made through different means.

MS EMILY LAU (in Cantonese): *President, the community is extremely shocked by the two incidents involving The Chinese University of Hong Kong (CUHK). The reply of the authorities makes us feel that the way of handling sexual harassment cases by the eight institutions is hardly satisfactory.*

President, I asked for a lot of information, but the authorities did not provide any. I asked for the number of the heads and deputy heads of the institutions who have received training in handling sexual harassment, but the authorities did not provide any. Concerning my question about the number of enquiries, the four institutions did not provide any either.

President, in part (a) of my main question, I asked what penalties had been imposed, together with the relevant number. In the reply, the Secretary said that 11 complaints were found substantiated. President, sexual harassment cases have occurred in each of the eight institutions, with the exception of the Lingnan University and the University of Hong Kong (HKU). What penalties have been imposed in respect of substantiated cases? He has not provided a relevant answer, President. Instead, he replied that if the complaint is substantiated, the party concerned would be reprimanded. I did not ask "what if". As each

complaint is substantiated, why did he not tell us whether the parties concerned were students or staff, and whether they were dismissed or reprimanded?

Besides, President, in part (a) of my main question, I asked whether the institutions had documented those cases known to them although the institutions had not received any formal written complaint. None of these institutions provides any answer. Though institutions are autonomous, they have to be accountable to the community. Why did the Secretary accept such an answer?

SECRETARY FOR EDUCATION (in Cantonese): President, we should understand that the responsibility of the Education Bureau in this aspect is to let the institutions know that they have to bear the responsibility in this regard. The institutions should set up a relevant mechanism, and an investigation should be conducted if an incident has occurred. Under such circumstances, we will not interfere under the principle of institutional autonomy. Ms LAU's request for figures in this question has been relayed to various institutions in an accurate and precise manner. While some institutions can submit specific figures in a short time, some cannot. We have urged the institutions to submit the data as soon as possible. However, in view of the short notice of an oral question, they may encounter some difficulties.

But concerning substantiated complaints, as each has been documented, I can read it out. In my main reply, cases are summarized into several categories. For instance, a student of a university was ordered suspended for a year and to perform 120 hours of volunteer work under the supervision of his faculty. Another student, after a disciplinary hearing by the institution concerned ……

(Ms Emily LAU stood up)

PRESIDENT (in Cantonese): Secretary, please hold on for a while.

MS EMILY LAU (in Cantonese): *President, as information of each university has been set out, could the Secretary provide further details one by one? For instance, concerning the three substantiated cases of the City University of Hong*

Kong (CityU), could the Secretary tell the Legislative Council whether the parties concerned are students or staff?

PRESIDENT (in Cantonese): Secretary, could you provide the information requested by Ms LAU?

SECRETARY FOR EDUCATION (in Cantonese): I am going to read out the information concerning the students of the CityU. After the disciplinary hearing, the CityU decided that the student would not be allowed entry to the swimming pool of the campus for three years. Besides, the student was found guilty and sentenced to imprisonment for six months by the Court.

Besides, another student of the CityU was ordered suspended for one year and would not be allocated a place in student hostel while studying in the institution. Moreover, under the supervision of the Development Office, the student was required to perform 120 hours of volunteer work.

PRESIDENT (in Cantonese): As more than 14 minutes have been spent on raising the main question by Ms LAU and the provision of the main reply and answering Ms LAU's supplementary questions by the Secretary, could the authorities provide information, if any, on specific cases of various tertiary institutions to Ms LAU in writing after the meeting?

SECRETARY FOR EDUCATION (in Cantonese): Absolutely. (Appendix II)

PRESIDENT (in Cantonese): A number of Members are still waiting for their turn to ask supplementary questions.

DR JOSEPH LEE (in Cantonese): *President, the eight institutions mentioned by the Secretary in his reply have set up mechanisms for handling sexual harassment complaints. But I noted some interesting points in the reply. For example,*

under the complaint procedures, some institutions allow both parties to be legally represented at the hearings while some do not. According to the Annex of the main reply, four institutions do not have any statistics on enquiries relating to sexual harassment. May I ask the Secretary why the practices are so inconsistent? The institutions have their own ways to deal with sexual harassment. Could the Secretary answer this very important question: Is there any safeguard in these mechanisms to pre-empt a situation where a person is investigated by his/her peers such as the involvement of external parties who will oversee the overall process?

SECRETARY FOR EDUCATION (in Cantonese): As I mentioned in my reply to Ms Emily LAU's question, institutions are required to provide information in a short span of time as we have also received the oral question at short notice. For some institutions which have maintained relatively clear statistics, they will find it easier to provide the information. We have reminded other institutions that they have to handle the day-to-day information in a proper manner so that they can provide information to us in response to Members' questions more readily.

As for legal representation and extent of participation in the process, most importantly, it should be determined by the institutions themselves. In my opinion, the most important prerequisite is that both parties can get equal and fair treatment in the process, instead of a situation where some people are entitled to certain rights and some people are not. Currently, different institutions have adopted different approaches, which are determined of their own accord.

As to the question of whether there is any involvement of external parties, to my understanding, generally there is none as such duty is mainly performed by the staff of the universities.

MR CHEUNG MAN-KWONG (in Cantonese): *President, it would be extremely difficult for anyone to complain about sexual harassment by his/her boss or teacher and it requires great courage. In part (b) of the main reply, it is mentioned that the institutions will initiate follow-up actions and investigation*

procedures into sexual harassment cases which have come to their knowledge. But is this the practice in reality?

In the incident concerning CUHK, some witnesses even stated in the Court that the university insisted that an investigation would only be carried out if a written complaint had been lodged by the party concerned or eyewitness. Otherwise, it will not conduct any investigation even though the case has come to its knowledge. Such a remark is different from the Government's version. Does this reflect that the Government says one thing but does another, and takes zero action while saying zero tolerance? Will the Government request the committees responsible for handling sexual harassment complaints in institutions to specify in writing that once a sexual harassment case has come to its knowledge, it will have the power to initiate investigation without receiving any written complaint or eyewitness' complaint?

SECRETARY FOR EDUCATION (in Cantonese): As the case mentioned by Mr CHEUNG is currently being handled in the Coroner's Court, I should not comment on it too much. But I can reveal that — as it has been reported by the press — to our understanding, the party concerned in this case is unwilling to testify and has acted in a very hesitant manner. If the party concerned is unwilling to testify, we have to take this factor into account. This does not mean that the university has not taken follow-up action. In fact, it has. However, the party concerned will be required to testify in the next stage. Therefore, the merits of each case are unique. Certainly, we know the reasons of some cases, but are not in a position to make judgment of the others as we have no knowledge of them.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MR CHEUNG MAN-KWONG (in Cantonese): *President, the last part of my discourse is my supplementary question.*

PRESIDENT (in Cantonese): Please repeat it.

MR CHEUNG MAN-KWONG (in Cantonese): *Will the Government request the institutions to specify in writing that once a case of sexual harassment has come to their knowledge, the relevant committee will initiate an investigation rather than depending on whether there is any written complaint or complaint by an eyewitness?*

SECRETARY FOR EDUCATION (in Cantonese): As I already mentioned in the main reply, we have requested the institutions to conduct an investigation on their own initiative.

MR CHEUNG MAN-KWONG (in Cantonese): *No, I mean whether this has been specified in written form. This is most important as there is no such provision.*

PRESIDENT (in Cantonese): Secretary, have the authorities requested the institutions to lay down provisions in black and white?

SECRETARY FOR EDUCATION (in Cantonese): President, as I mentioned in the main reply, this is the duty of the institutions. Our responsibility is to remind them that as arrangements have been specified in various ordinances, they need to tie in with those arrangements properly in terms of procedure and comply with the spirit of the law in other aspects.

MR ALBERT HO (in Cantonese): *When a victim of sexual harassment considers lodging a complaint, he/she will have a lot of worries. First of all, the victim may worry about the existence of a reasonable and appropriate system of confidentiality which will seek to protect the cases from being exposed, thereby preventing any embarrassment to the victim once a complaint has been lodged. Secondly, there is concern about the impartiality and independence of the*

investigators, and the possibility of reprisal and even losing the jobs after their complaints have been handled. These worries are real. So, as Mr CHEUNG Man-kwong said, the complainants need great courage before deciding to lodge a complaint eventually.

I am particularly concerned that many institutions have refused to provide data on enquiries relating to sexual harassment, according to the Government. Nevertheless, the figures provided by those which have entertained our request cannot be regarded as small. For instance, the number of enquiries provided by HKU and another institution is more than 40 and more than 20 respectively. The complainants, who might have no confidence in the mechanism after enquiries, did not take any follow-up action. Such a situation is likely ……

PRESIDENT (in Cantonese): Please raise your supplementary question.

MR ALBERT HO (in Cantonese): *Here is my supplementary question. There may be lots of checklists and procedures under the mechanism of various institutions for handling sexual harassment. However, has the Equal Opportunities Commission (EOC) helped review such procedures or offered advice to ensure that such procedures can meet the requirements of advanced countries, thus genuinely protecting the due rights of the victims? In other words, has the EOC intervened or provided advice? If there is inadequacy in the mechanisms, will the Government encourage the universities to heed the views of the EOC so as to ensure that the system is sound?*

SECRETARY FOR EDUCATION (in Cantonese): I agree that each complainant has many worries and what Mr HO just mentioned are the facts. Concerning these issues, we have to consider these factors from the legal perspective and other aspects.

To specifically answer Mr HO's supplementary question, I would like to point out that as I mentioned in the main reply, the EOC will hold seminars and workshops in various institutions on a regular basis to update their knowledge and

provide skills in this aspect in order to protect the privacy of the parties concerned. In so doing, the parties concerned will feel assured rather than embarrassed or being at a loss as to what to do. Thus, the EOC is committed to ensuring that the institutions have enough knowledge in this regard and it will discuss relevant practices with them.

MR ALBERT HO (in Cantonese): *President, may I ask specifically whether the mechanisms of the institutions have been reviewed by the EOC and whether the review result is to the satisfaction of the EOC? Will the Government promote this?*

SECRETARY FOR EDUCATION (in Cantonese): As far as I know, the answer is in the affirmative.

PRESIDENT (in Cantonese): We have spent more than 24 minutes on this question. Last oral question.

Development of Private Hospitals

6. **MR PAUL CHAN** (in Cantonese): *President, in April this year, the Government invited both local and overseas tenders for the development of private hospitals at two sites in Wong Chuk Hang and Tai Po, so as to increase the overall capacity of the healthcare system in Hong Kong and to cope with the increasing service demand. To ensure that the services of the new hospitals are of good quality and will help develop the medical industry, the Government has stipulated a set of special requirements in the tender documents. In this connection, will the Government inform this Council:*

(a) apart from considering if the new hospitals are able to meet the set of special requirements in the tender documents, the quality of the service provision and the tender premiums, whether it has other factors (for example, whether the new hospitals are universities' affiliated teaching hospitals) to consider; if it has, of the details;

(b) whether the Government has assessed the impact of the private hospitals to be developed at the two sites on the healthcare manpower in public hospitals in the next decade; if it has, of the details; if not, how the service quality of public hospitals can be maintained; and

(c) apart from considering the responses to and experience of this tender exercise following its closure in July this year, whether the Government has other factors to consider in deciding the detailed land disposal arrangement for the remaining two sites reserved for private hospital development; if it has, of the details; if not, the reasons for that?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, there are currently a total of 39 public and 12 private hospitals in Hong Kong, providing around 27 000 and 4 000 beds respectively as at the end of 2011. Over 90% of the in-patient services in Hong Kong are provided by public hospitals, the services for which are subsidized at a rate as high as 95%. This has over the years resulted in an imbalance between the public and private healthcare sectors and has limited the competition and collaboration between the two sectors. There are also limited choices for patients who may want a greater choice of hospital services and can afford more than public fees.

Public healthcare services have been and will continue to be the cornerstone of our healthcare system, acting as the healthcare safety net for all and remaining strong and robust through continued investment and commitment from the Government.

To complement this public system, it is our policy to facilitate private hospital development to address the imbalance between the public and private sectors in hospital services. To meet the challenges posed by the ageing population, rising medical costs and increasing demand for healthcare services, we need to increase the overall capacity of the healthcare system in Hong Kong. In addition to our continued efforts to strengthen and increase the service capacity of our public healthcare, it is in line with the development in this direction to

facilitate private hospital development so as to enable the public to have more choices and to have access to affordable high quality private hospital services.

In this connection, the Government has reserved four sites respectively at Wong Chuk Hang, Tseung Kwan O, Tai Po and Lantau for private hospital development. We first put out the two sites at Wong Chuk Hang and Tai Po for open tender on 13 April 2012.

My reply to the three parts of the question is as follows:

(a) To ensure that the tendering exercise is carried out in a fair, just and open manner, details of all requirements for the tender exercises of the two sites at Wong Chuk Hang and Tai Po are set out in the tender documents. We hope that the new hospitals can give priority to serving the local residents so that Hong Kong residents can have more choices in accessing affordable and quality private healthcare services with price transparency. For this reason, we have stipulated a set of service requirements in the tender documents, such as the number of beds to be provided, the commissioning date of the new hospitals, the types of specialty services to be provided by the hospitals, the maximum number of beds used for obstetrics services, provision of services to local residents and services to be provided at packaged charge, and so on, so as to ensure that the services provided by the new hospitals would be of good quality to cater for the public needs and enhance the local healthcare service standard. In the selection of tenderers, we also require all tenderers to have certain experience in operating or managing a hospital so as to ensure that the successful tenderers have the capability to implement the development plan of the new hospitals. Such a requirement has been set out in the tender documents. For example, we require that more than half of the directors or partners of the tenderers must have at least three years' experience, from 2006 to 2011, in managing or operating a hospital in Hong Kong or overseas.

The current tender exercises are conducted openly. All parties (including Faculties of Medicine of the universities) are welcome to

participate as long as they meet the requirements set out in the tender documents.

(b) In view of the manpower requirements for healthcare professionals, for the three years starting from 2012, the Government will allocate an addition of $200 million to increase the number of first-year first-degree places in medicine by 100 to 420 per year, nursing by 40 and allied health professional by 146.

We understand the importance of a long-term healthcare manpower planning to ensure the healthy and sustainable development of our healthcare system. As such, we have set up a Steering Committee, chaired by me, to conduct a strategic review on healthcare manpower planning and professional development so as to assess the manpower demand of various healthcare professions. To assist the Steering Committee in obtaining the necessary information, we have commissioned the University of Hong Kong (HKU) and The Chinese University of Hong Kong to provide professional advice and technical support for the strategic review. The HKU will conduct, by scientific and objective methods, a comprehensive manpower projection for healthcare professions covered in the strategic review.

In making long-term manpower projections, we will take into account the anticipated manpower requirements of major healthcare providers having regard to, among other things, the wastage trends of different healthcare professions, the ageing rate of the population and changes in demographic profiles, and the community's need for services in particular areas, and so on. The Government will also take into consideration the implications on healthcare manpower arising from changes in healthcare services delivery models and related policies such as development of private hospitals and primary care services and the introduction of the Health Protection Scheme, and so on. The Steering Committee will assess manpower needs in the various healthcare professions and put forward recommendations on how to cope with anticipated demand for healthcare manpower, strengthen professional training and facilitate professional

development having regard to the findings of the strategic review, with a view to ensuring the healthy and sustainable development of Hong Kong's healthcare system. We expect to complete the review by the first half of 2013.

(THE PRESIDENT'S DEPUTY, MS MIRIAM LAU, took the Chair)

(c) The invitation of tenders for the two sites at Wong Chuk Hang and Tai Po reserved for private hospital development will close on 27 July 2012. Taking into account the time required for evaluating in parallel the tender submissions received for both exercises, we expect to announce the tender results in early 2013. We will consider the timing and arrangements for the disposal of the other two reserved hospital sites at Tseung Kwan O and Lantau, having regard to factors such as the market responses and experience from these two tender exercises, as well as the progress of site formation at the reserved sites.

MR PAUL CHAN (in Cantonese): *Deputy President, the Secretary mentioned in part (b) of the main reply that for the three years starting from 2012, the Government would allocate an additional $200 million to increase the number of places in medicine by 100. However, public hospitals are currently afflicted with a shortage of doctors. As a consequence of the considerable shortage of manpower and long working hours, many doctors have been lost to the private sector. The additional places mentioned now in the main reply are actually just a drop in the ocean; moreover, in a manner of speaking, one can hardly put out a nearby fire bringing water from afar.*

Deputy President, currently many children of Hong Kong people study in overseas universities. Quite a number of them are enrolled at prominent institutions in advanced countries. Many have gained considerable experience after graduation. May I ask the Secretary whether the Steering Committee under his chairmanship will, in devising healthcare manpower planning, consider using means other than examinations to afford opportunities to these doctors,

who are offspring of Hong Kong people overseas, to return and serve the public in Hong Kong?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, we in the Steering Committee will review the overall human resource needs for health care. We also hope to draw a conclusion on how to attract foreign elites or eligible persons including, as the Member mentioned just now, offspring of Hong Kong people who study in medical schools or nursing schools, or possess other professional qualifications abroad, to return for professional practice in Hong Kong.

Of course, as healthcare systems vary throughout the world and university qualifications are not mutually recognized, these students have to sit an examination again after their return to Hong Kong. About six months ago, I already indicated to the Medical Council my hope that they would consider increasing the number of examinations held each year under the existing mechanism so as to free more people from the constraint of only one examination per year and allow one more sitting instead. Hopefully, such a move can attract more young doctors back to Hong Kong from overseas.

In the long run, it takes time to deal with such issues as whether certain qualifications can be recognized or exempted by us and whether there are ways to enable mutual recognition of academic qualifications with overseas universities. At present, as far as the overall review of human resources is concerned, we believe we must proceed with care. From some overseas experience, I also note that fully lifting the restrictions on all the professional qualifications may result in some people with lower professional standards than ours entering the Hong Kong market. Therefore, we have to deal with it carefully.

Regarding the overall demand for healthcare manpower, I certainly agree that there is currently a need for more healthcare workers, but we should also be careful. Although we should increase the human resources in this regard in the long run, we should refrain from increasing them so excessively that healthcare workers are rendered unable to find jobs in the market, or else engage in services that are considered immoral. Therefore, we have to be particularly careful with this.

DR LEUNG KA-LAU (in Cantonese): *Deputy President, I wish to follow up part (b) of the main question. This part of the question asks whether the Government has assessed the impact of the development of private hospitals at the two sites on the healthcare manpower, but the Secretary's reply has listed more than 10 considerations for overall manpower planning. In fact, it should not be necessarily so complicated, because Mr Paul CHAN just wished to ask about the impact of the development of private hospitals on the demand for healthcare manpower. Let me give a simple example: If each of the two private hospitals provides 300 beds and one nurse is required for each bed, then 300 nurses will be needed in total. If the ratio of doctors to beds is one to four, then 75 doctors will be needed. If one doctor attends to three beds, then 100 doctors will be needed. So, the Secretary needs not couch it in such complicated terms. I just wish to ask the Secretary about the expected number of beds in these two private hospitals, as well as the upper and lower limits of the projected ratio of manpower to beds. Will the Secretary tell us the respective projected upper and lower limits of manpower, comprising mainly doctors and nurses, for these two hospitals?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, I have already mentioned in the main reply the current ratio of beds between public and private hospitals. I have also mentioned that no matter how we increase the number of beds in private hospitals, the relevant number represents only a relatively small percentage when compared with public hospitals. While we require that the number of beds to be provided by these two hospitals should not be less than 300, we also allow them to consider different modes of service delivery. Now that the tendering process is still underway, I do not intend to talk too much about how these two hospitals may operate, but different bidders would have different considerations on the future scope of services. Therefore, although we currently require the provision of at least 300 beds, whether the operators will ultimately provide 300 or 500 beds, or provide more daytime healthcare services, will have an impact on the demand for healthcare workers. However, in simple terms, if a hospital provides 300 to 500 beds, it would require about 300 to 500 nurses. In the case of two hospitals, I believe about 600 to 1 000 nurses would be required. When these two hospitals are completed or commissioned in the next four to five years, such many nurses will be required, and in each of these four or five years we will be able to train 2 000 nurses as

well. Four years later, we may probably have about 8 000 to 10 000 nurses. Therefore, I do not believe it will be a factor that has major implication on the manpower demand in the market.

Regarding private doctors, Members may also understand that — especially Dr LEUNG, as a private doctor, should know that — nowadays, it is sometimes no easy matter even for private doctors to secure beds in private hospitals. Hence, I do not believe it is necessarily the case that an increased number of hospitals in the future will entail an addition of so many doctors. Many doctors may work in the new hospitals, reflecting greater flexibility on the part of private hospital doctors.

Moreover, in tandem with the future increase in places for medical students, the overall healthcare manpower in Hong Kong will also be increased to a certain extent. As to the question of the appropriate rate of increase, I do not wish to make any assertion before the Steering Committee comes to a conclusion. However, the modes of healthcare delivery are changing and the specialties are also advancing. So we need to start afresh with the detailed planning of the necessary human and material resources. Nevertheless, I do not believe the demand for human resources of these two private hospitals, and even a total of four new hospitals in the future, is as large as that of public hospitals or the public healthcare system as a whole in the future. Therefore, I am instead more concerned about the necessary manpower required by public hospitals in the future. A clearer calculation in this respect is necessary.

DR JOSEPH LEE (in Cantonese): *Deputy President, the Secretary has mentioned just now, and I absolutely agree, that there will be 2 000 training places for nurses every year and 10 000 nurses will have been trained five years from now. That said, the Secretary may have forgotten that currently about 1 800 nurses are lost every year, which translates into a loss of about 8 000 nurses in five years' time; hence, the positive growth is not significant. This point is very important.*

What Mr CHAN asked the Secretary was, in fact, how sufficient manpower could be ensured to maintain public services, but the Secretary indicated in part (b) of the main reply that the number of nursing places would be increased

by 40. However, my understanding is that the additional 40 places are intended for training psychiatric nurses, so I would like to ask the Secretary through the Deputy President whether the four hospitals will be equipped with psychiatric specialties. Given that the authorities do not increase the number of training places for general nurses, if the four hospitals need only general nurses and about 300 to 1 200 beds, at least 1 000 to 2 000 nurses will be required, but at this stage there is an addition of only 40 places for psychiatric nurses. May I ask the Secretary how a sufficient supply of nurses can be assured several years later?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, I believe Dr LEE knows it better, because he is a lecturer of the nursing department. He should be clear about the situation of the students trained by him. We all know that 2 000 student nurses will graduate every year, which is an achievement attributed to the planning in recent years, considering that only 1 000 students graduated every year in 2008-2009 or before. I believe the additional manpower in this respect comprises general nurses rather than psychiatric nurses. The additional 40 places for psychiatric nurses are intended for meeting some specific needs of the psychiatric specialty, which may be more important in public hospitals. We believe such needs are less in the private than the public sector. Therefore, I hold that this is not one of the greatest factors as far as the future demand for human resources is concerned.

MR LAU KONG-WAH (in Cantonese): *Deputy President, many middle-class people have taken out medical insurance, but as the current private hospital charges are very expensive, insurance is a non-event. At the end of the day, public hospitals become their last resort for medical treatment. Now that four sites for private hospital development are being put out to open tender, how can the authorities ensure that in the future those people who have taken out medical insurance …… Especially as the Government will once again vigorously promote the voluntary Health Protection Scheme, how can it ensure that these people can enjoy private hospital services? The Secretary also mentioned that he would ensure that the new hospitals give priority to serving local residents. May I ask him how he can ensure that the new hospitals give priority to serving local residents? In other words, what measures are in place to ensure that?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, as Members may have noticed, our tender stipulates that at least 50% of the beds in these hospitals should be best occupied in the future, that is, the bed occupancy rate refers to use by Hong Kong people, and this request will also be specified in the contract to be signed between them and the Food and Health Bureau. Furthermore, the method of calculation for the current tender prescribes that if any bidders are willing to increase this percentage to 70%, they can be awarded full marks for this part. This is an incentive to bidders. If they have the heart to serve the people of Hong Kong and wish to be awarded full marks for this part, they must make at least 70% of their capacity available to local patients.

MR LAU KONG-WAH (in Cantonese): *He has not replied on how to ensure that those who have taken out medical insurance can enjoy such ……*

DEPUTY PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, perhaps let me explain it once again. In fact, we have already made a clear explanation in this Council that we require the new hospitals to have a certain percentage of their charges calculated in the form of packaged charges. Regarding such packaged charges, we have not yet drawn up any insurance scheme at this moment, but this is directly related to the future development of the insurance system. If they are willing to accept this practice, the percentage in question can reach 100% as well, and if they consider it feasible, I believe it can tie in with the future private medical insurance under government regulation.

MS AUDREY EU (in Cantonese): *The Secretary mentioned earlier in his reply that the Steering Committee under his chairmanship would devise healthcare manpower planning. In fact, I have also learnt in a subcommittee on health protection of this Council how the Government devises manpower planning and budgeting in this regard. Apart from the issue of accuracy of the planning exercise, the relevant arrangements made by the authorities are all like distant*

water for a nearby fire, because it takes a very long period of time to train a doctor or nurse. Therefore, will the Secretary consider granting recognition to the qualifications of doctors or nurses who graduated from certain universities or institutions? I am not asking the Secretary to make the door wide open, but if the authorities consider that their qualifications are closest to ours, or their professional qualifications can be granted recognition, they should be allowed to work in Hong Kong. In connection with the recently released report on population policy, I have raised a question as to whether a points system can be adopted to allow the doctors and nurses from some places to come and practise medicine in Hong Kong provided that they meet our requirements. May I ask the Secretary whether it is possible to most effectively provide some healthcare workers in a short time without the need to put in plenty of resources or consider how sufficient manpower can be trained in the long run?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, I mentioned earlier that the current shortage of manpower occurs in the public healthcare system. Regarding the private healthcare system, as I also mentioned earlier, many private doctors enjoy great flexibility. They can cope with many problems "with greater dexterity". As regards the public healthcare system, the Hospital Authority (HA) has adopted a temporary enrolment and registration system in the past few months to employ 10-odd doctors who graduated abroad. After their arrival in Hong Kong, they worked with the HA on the one hand, and considered sitting the licensing examinations in Hong Kong on the other. In my view, the current system can help those doctors who are considered competent to practise in Hong Kong after screening, so that they can work for some time first in the public healthcare system. If they have passed the examination to become a registered medical practitioner in Hong Kong, they can decide for themselves either to stay in the public healthcare system or to pursue other plans.

Secondly, the HA has noticed that, meanwhile, many senior consultants or specialists are reaching retirement age. Therefore, over the past two years, we have also requested the HA to employ these doctors and place back into the public healthcare system, undertaking clinical work in particular. At present, more than 100 doctors have been employed. They are supposed to have retired or been lost, and most of them work quite long hours. About 70 of them have

working hours equivalent to those of a full-time doctor, namely the full-time equivalent. Moreover, they are all experienced doctors. Therefore, I think that the HA currently has, rather than not, a solution to solve the problem of shortage of doctors, but there is simply a substantial shortfall from the target number. We will continue to identify other source of supply or support.

MS AUDREY EU (in Cantonese): *The Secretary has not answered my question. Deputy President, I am not saying that he has no solution, but the solution that he referred to is nothing more than just employing 10-odd doctors from abroad or re-employing retired doctors, which still represents a substantial shortfall from the desired level of manpower, as the Secretary so said just now. That is why I asked him whether he would consider allowing graduates from specified institutions to practise medicine in Hong Kong, given that there are many graduates from famous institutions abroad. I have also asked about the problem of nurse shortage having regard to the recently released report on population policy, that is, can we adopt a points system to recruit foreign healthcare workers with qualifications suitable for Hong Kong to work in Hong Kong. All of these are solutions that I propose to increase healthcare manpower, but the Secretary has not answered this part.*

DEPUTY PRESIDENT (in Cantonese): Okay, please sit down. Secretary, do you have anything to add?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): As I have also mentioned just now, the Steering Committee is studying various possibilities, but at this moment, as we have not come to a conclusion in this regard, we cannot request the Medical Council or the Nursing Council to rashly change its current policy.

DEPUTY PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Elector Registration

7. **MR ALAN LEONG** (in Chinese): *President, the figures quoted in the reply to my written question on 22 June last year by the Constitutional and Mainland Affairs Bureau indicated that in the past years, the percentage of the number of electors registered online via GovHK in the overall number of registered electors was extremely small. For example, in 2010, only one out of every 4 500-odd registered electors registered via GovHK while other electors all applied by filling in elector registration forms (registration forms). In connection with the measures to improve the elector registration channels, the rate of elector registration and the accuracy of electors' addresses, will the Government inform this Council:*

(a) of the respective numbers of electors registered via GovHK and those registered by filling in registration forms during the period between 1 January 2011 and 16 May 2012;

(b) given that the number of electors registered via GovHK has persistently been on the low side since 2007 despite the high prevalence of the Internet, whether the Government has reviewed the causes for such small number of online registrations; if it has, of the details; if not, the reasons for that;

(c) whether the Government will consider improving the existing online registration method; if it will, of the details; if not, the reasons for that;

(d) given the low registration rate among young electors aged below 30 when compared with the overall number of registered electors, whether the Government has reviewed the causes and adopted any improvement measure; if it has, of the details; if not, the reasons for that; and

(e) given that a number of suspected vote-rigging cases were uncovered in the District Council elections held last year, and that the Registration and Electoral Office (REO) issued letters to all registered electors in February this year informing them of the elector registration arrangements regarding the new District Council (second) functional constituency and appealed to members of the public to return wrongly delivered election-related mails they receive to the REO and to put a "tick" in the appropriate box on the specially designed envelopes to indicate the reason for returning the mails, of the number of mails returned to the REO, with a breakdown by the following reasons in table form:

(i) the addressee of the mail does not reside at the address;

(ii) the addressee of the mail has already moved out;

(iii) there is no such address; and

(iv) the mail is returned undelivered by the Post Office?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, during the 2012 Voter Registration Campaign, the Administration appealed to all those who were eligible to register as electors by the statutory deadline (that is, 16 May) through various publicity channels. The public could return the completed application forms to the REO by mail, facsimile or in person. Persons holding a valid personal digital certificate may also register online through the GovHK website.

As regards the questions raised by Mr Alan LEONG, our reply is as follows:

(a) The numbers of electors successfully registered through the GovHK website and by filling in an application form in the 2011 and 2012 voter registration cycles are as follows:

Year	*Through the GovHK website*	*Through filling in application forms*
2011 (from 17 May 2010 to 16 July 2011)	36	201 035
2012 (from 17 July 2011 to 16 May 2012)	28*	139 726*

Note:

* The REO is now processing the applications for the year 2012. Figures given are the number of applications processed as at 29 May 2012.

(b) and (c)

According to section 4 of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A), when a person applies for registration as an elector, the application must be signed by that person. If a person registers through the GovHK website, he must possess a valid personal digital certificate and sign with that certificate to meet the statutory requirement. Voter registration forms are available at the REO, District Offices and Public Housing Estate Offices or can be downloaded from the dedicated voter registration website. At present, the majority of applicants submit their completed voter registration forms either through mail or facsimile and the process is simple. Online registration is an additional way to facilitate the public who prefer not to submit their applications in the conventional way by filling in an application form.

(d) The REO has been making all kinds of efforts to encourage eligible young people to register as electors. According to the 2011 Final Register of Electors, the registration rate of young people aged 18 to 30 was 60%. Although this figure was lower than the overall rate of 75.6%, it was already a substantial increase compared to the registration rate of the same age group in 2008 (54%). To sustain the increase in the registration rate of young people, the REO has set up voter registration counters in the Immigration Department's Registration of Persons Offices to facilitate the public to register as

electors when they replace their identity cards. The REO has also set up voter registration counters in higher education institutes during Voter Registration Campaigns to encourage young people to register as electors.

The REO has also made use of specific promotion measures to call on the young people to register as electors. These include broadcasting Announcements of Public Interests on television and radio specifically produced to target at the young people, posting posters specifically designed for young people in public places, organizing large scale promotion activities targeting at young people in large shopping malls and advertising at food and social networking websites and instant messaging tools frequently visited and used by young people. Moreover, hyperlinks of the voter registration website are provided at government websites and websites frequently visited by young people to facilitate them to look up information on voter registration.

(e) In February, the REO issued a letter to all registered electors (about 3.56 million) explaining the registration arrangements regarding the District Council (second) functional constituency and around 138 600 letters were returned (about 3.9%). The breakdown is as follows:

(i) around 64 700 letters were returned as the resident indicated "the addressee of the mail does not reside at the address" on the envelopes;

(ii) around 63 400 letters were returned as the resident indicated "the addressee of the mail has already moved out" on the envelopes;

(iii) around 4 800 letters were returned as the resident indicated "there is no such address" on the envelopes; and

(iv) around 5 700 letters were returned by the Post Office as they were undelivered.

Parking Spaces for Container Vehicles

8. **MS MIRIAM LAU** (in Chinese): *President, it has been reported that temporary car parks available for the parking of container vehicles in the New Territories North have been recovered by the Government one after another, thereby causing a substantial reduction in container vehicle parking spaces in the district which are already in short supply, and a large number of container vehicles are forced to park by the roadside. To prevent their vehicles from being damaged or even stolen, container vehicle drivers have to stay in the vehicle compartments after work; not only are they unable to go home, but their health is also affected as they are stranded in the compartments over a long period of time. Some members of the industry have pointed out that such working conditions will only exacerbate the problem of shortage of manpower with no new entrants, which the freight industry is now facing, and will eventually stifle the development of the logistics industry. In this connection, will the Government inform this Council:*

(a) of the number, locations and areas of the short-term tenancy (STT) sites, which had been used as temporary car parks, recovered by the authorities in the past three years, as well as the number of container vehicles which could be parked at these sites, the length of the tenancies which had been entered into, and the reasons for recovering the sites;

(b) of the timetable for allocating land as logistics back-up sites by the authorities in the next five years, and the quantity, areas, locations and possible uses of those sites; among such sites, the number of those which will be allocated for container vehicle parking; the expected number of parking spaces which may be provided at each site;

(c) whether the authorities have conducted any long-term assessment on the demand for container vehicle parking spaces; if they have, of the details, and the follow-up measures they will take when the results indicate that the container vehicle parking spaces provided by the Government will not be able to satisfy the demand in the next five

years; if not, the reasons for that, and whether they will consider conducting such an assessment; and

(d) given that some members of the industry have pointed out that many public car parks prohibit the parking of container tractors, thereby forcing drivers to park those tractors illegally by the roadside, whether the authorities have studied how to solve the problem of the parking of container tractors for the industry; if they have, of the details of the relevant measures; if not, the reasons for that?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, my reply to the four parts of the question is as follows:

(a) Since January 2009, the Lands Department (LandsD) has terminated a total of 210 STT sites (with a total area of about 1 510 000 sq m) used as temporary car parks with tenancy terms generally ranging from six months to five years. Among them, 78 STT sites (with a total area of about 890 000 sq m) could be used for container vehicle parking. Details are at Annex.

Of these 78 sites, 58 have been re-tendered for STTs under which container vehicle parking is allowed. The reasons for terminating STT sites are usually expiry of tenancy, termination by tenants, termination by the Government for re-tendering and government projects, and for land sale or other long-term development.

(b) Currently, the LandsD has granted a total of 126 STTs measuring 169 hectares for logistics-related uses such as open storage of goods, consolidation and handling of container cargoes, and logistics and freight forwarding activities, and so on. Of these, over 100 hectares are in Kwai Tsing to support container terminal operations. Meanwhile, we are exploring the feasibility of using the remaining sites in Kwai Tsing of about 13 hectares for logistics-related purposes, with a view to releasing the sites in phases to meet the trade's demand.

Generally speaking, government sites which are suitable for logistics-related uses and with no immediate long-term development will be let by the LandsD in the market for container vehicle parking or other logistics-related uses by means of STT. The LandsD will publish on its website STT tender forecast for the coming six months for the reference of interested parties.

Separately, depending on the planned use of the relevant land use zones, private land owners may, after obtaining planning permission from the Town Planning Board and complying with the relevant land lease conditions, use their land as permanent or temporary container vehicle parks/repair workshops.

(c) and (d)

According to the statistics of the Transport Department (TD), industrial/commercial buildings and temporary car parks in Hong Kong currently provides about 5 300 designated parking spaces for container vehicles or tractors. Container tractors whose length meets the relevant requirement for on-street parking may also park at the approximately 4 000 on-street parking spaces for goods vehicles across the territory. Logistics back-up sites also provide a certain number of container vehicle parking spaces.

The Government is committed to providing adequate parking spaces for all vehicle types in various districts to meet demand. The TD has been monitoring the demand and supply of parking spaces for different categories of vehicles including container vehicles, and has implemented the following improvement measures: (i) provide additional on-street parking spaces at locations where there is demand on the premise that traffic flow, road safety and other road users are not affected; and (ii) monitor the utilization of temporary car parks — the relevant departments maintain close contact with one another to identify and release suitable sites for use as temporary car parks where practicable, with a view to increasing the number of parking spaces.

The TD will continue to monitor and review the demand and supply of parking spaces for container vehicles as well as the effectiveness of the above measures. Appropriate initiatives will be introduced when necessary to meet the demand of the public and the transport trade for parking spaces.

Annex

STT sites that could be used as temporary car parks
which have been terminated since 2009

District	*Number of STT sites that could be used as temporary car parks*	*Area (approximate) (sq m)*	*Number of STT sites that could be used for container vehicle parking* [Note]	*Area (approximate) (sq m)*
HK Island	26	from 477 to 9 640	1	4 792
Kowloon	60	from 1 130 to 50 800	21	from 1 130 to 50 800
Outlying Islands	2	from 1 660 to 21 800	1	21 800
North	17	from 575 to 11 500	4	from 575 to 11 500
Sai Kung	12	from 1 630 to 24 900	2	from 8 550 to 16 900
Sha Tin	27	from 1 070 to 10 100	10	from 1 070 to 10 100
Tuen Mun	17	from 858 to 19 100	6	from 858 to 19 100
Tai Po	10	from 1 880 to 19 100	3	from 3 100 to 19 100
Tsuen Wan and Kwai Tsing	31	from 1 790 to 34 100	30	from 1 790 to 34 100
Yuen Long	8	from 756 to 7 050	0	-
Total	210	1 509 532	78	891 022

Note:

Among the 210 STT sites that could be used as temporary car parks, 78 could be used for container vehicle parking.

Theft of Mobile Phones

9. **MR ALBERT HO** (in Chinese): *President, mobile phones have become more and more popular in Hong Kong, and its penetration rate ranks first in the world. In this connection, will the executive authorities inform this Council:*

(a) of the number of reported cases of loss of mobile phones (loss cases) received by the police in each of the past three years and, among them, the number of those related to theft and robbery;

(b) among such loss cases, of the number of those in which the mobile phones could eventually be recovered;

(c) of the major means by which the authorities recovered the mobile phones; and

(d) whether the authorities will consider following overseas examples by setting up a centralized reporting system through which lost mobile phones can be traced using their International Mobile Equipment Identity (IMEI) numbers, so as to avoid such phones being used by other persons for illegal purposes?

SECRETARY FOR SECURITY (in Chinese): President, this question involves issues of two aspects: theft and snatching of mobile phones (parts (a) to (c)) and setting up of a centralized reporting system/database (part (d)). We have consulted the Commerce and Economic Development Bureau on the reply to part (d) which is related to the Commerce and Economic Development Bureau's programme areas. The reply to the various parts of the question is as follows:

(a) The number of theft cases involving mobile phones reported in the past three years is at Annex.

(b) and (c)

The police do not have corresponding statistical figures of reported loss cases or the figures of recovery of such phones. The police are greatly concerned about the crime situation related to theft and snatching cases. Tackling "quick cash" crimes, in particular pick-pocketing, miscellaneous theft and snatching, remains the Operational Priorities of the Police for 2012. In the meantime, the Fight Crime Committee has identified "Beware of Deception" and "Mind Your Belongings" as the themes of the fight crime publicity campaign for 2012-2013 with a view to enhancing publicity on crime prevention. The police will continue to step up patrols at black spots and conduct intelligence-led raiding operations to places where the stolen goods are sold.

(d) The Administration is aware that some overseas government departments or communications service providers have set up a central database of the built-in IMEI numbers to prevent the reuse of stolen mobile phones. The police have approached the Office of the Communications Authority (OFCA) (formerly known as the Office of the Telecommunications Authority) to understand the feasibility of adopting such measure in Hong Kong. In this regard, the OFCA considers that there may be certain difficulties in setting up an IMEI database in Hong Kong:

Firstly, some of the handset manufacturers have not embedded a valid IMEI number in the mobile phones and it is possible that the IMEI number of a phone can be changed. Such being the case, preventing the reuse of stolen mobile phones by means of IMEI numbers may not be effective;

Secondly, most of the mobile phones lost in Hong Kong will be smuggled out of Hong Kong for use. Only by reaching an agreement with the authorities in those areas and by registering the IMEI number of each lost phone with the mobile phone operators

there can we ensure that the lost mobile phones are disabled when they are put to use in any communication networks of areas outside Hong Kong. Besides, all mobile phone operators concerned in Hong Kong and these areas have to install an Equipment Identity Register (EIR) system before they can make use of such technology. However, such a system is yet to gain popularity in the industry. If the lost mobile phones are smuggled to areas outside Hong Kong for use and if the mobile phone operators there have not installed the EIR system, the IMEI database will not function even if it has been set up.

In fact, with the advancement of mobile phone technology and prevalence of smart phones, users of such phones can make use of certain software to keep track of their lost smart phones, or lock up their phones by means of remote control.

Annex

Number of theft and snatching cases
involving mobile phones reported between 2009 and 2011

Cases	*2009*	*2010*	*2011*
Theft (Figures in bracket denote the number of snatch cases)	4 704 (156)	4 892 (140)	5 787 (218)

Subsidized Places in Residential Care Homes for Elderly

10. **DR JOSEPH LEE** (in Chinese): *President, at present, elderly people with long-term care service needs wishing to stay in subsidized places in residential care homes for the elderly (RCHEs) have to wait for quite a long time. They may stay in private RCHEs at their own costs before they are allocated subsidized places. If their children cannot afford private RCHE places, such*

elderly people may apply for Comprehensive Social Security Assistance (CSSA) to pay for the relevant fees, but their children are required to make a declaration of not covering living expenses for them (commonly known as "declaration of not providing support to parents" or "bad son statement") before the elderly people can receive CSSA payments. It has been learnt that due to traditional values, inadequacy of CSSA payments and lack of monitoring on private RCHEs, quite a number of elderly people have not received proper RCHE services. In this connection, will the Government inform this Council:

(a) whether the authorities have considered revising the requirement concerning the "bad son statement" to allow elderly people who receive limited support from their children to apply for CSSA, thereby enabling them to have sufficient resources to choose RCHEs that suit them; if they have, of the details; if not, the reasons for that;

(b) whether the authorities have considered introducing other measures (including joint subsidies approach), with the aim of reducing the Government's financial burden on the one hand and dispensing with the requirement for the children to sign "bad son statements" on the other, so as to enable more elderly people in need to be expeditiously admitted to RCHEs to receive proper residential care; if they have, of the details; if not, the reasons for that;

(c) given that the Government proposed a Fee Assistance Scheme (FAS) for residential care services (RCS) in 2003 to direct subsidize eligible elderly people who have care and financial needs, in the form of a "voucher", to enable them to receive RCS at RCHEs of their own choice, of the progress of FAS; and

(d) given that some elderly people have indicated that as private RCHEs are of varying quality and the fees are expensive, most of the elderly people do not want to live in private RCHEs, whether the Government has any plan to step up regulation of private RCHEs, with a view to boosting the confidence of elderly people in private

RCHEs and alleviating the waitlisting situation for subsidized places; if it has, of the details; if not, the reasons for that?

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to Dr Joseph LEE's question is as follows:

(a) and (b)

The CSSA Scheme aims to help families in financial hardship meet their basic needs. CSSA payments can be flexibly deployed and used for meeting elderly residential care expenses of the recipients if necessary.

CSSA applicants are subject to means test. This is because CSSA is basically an income supplement. The Administration will first ascertain the recognized needs of the applicant and then verify his deployable resources. The shortfall would be met by CSSA. For applicants who have the financial support of family members and therefore need not rely solely on CSSA, they should so declare. This helps ensure the proper use of public money and enable the non-contributory CSSA Scheme to operate in a sustainable manner. The above principle applies to all applicants, including elders. As such, when elders apply for CSSA on their own, we require their children to make a simple declaration. The purpose of the declaration is not to prove that they do not contribute to the living expenses of their parents, but for them to provide factual information on the financial support they give. There is a practical need for this arrangement. Otherwise, it would be difficult for the Administration to ascertain the financial situation of the applicant and calculate the amount of CSSA that he may receive.

Noting that many elderly CSSA recipients choose to live in non-subsidized RCHEs, we have, since 1 June 2012, introduced a

new Residential Care Supplement of $265 per month for all CSSA recipients aged 60 or above who occupy non-subsidized residential care places for the elderly, so as to ease their financial burden. There are about 25 000 elderly recipients in total benefiting from this at present.

(c) The Elderly Commission (EC) had examined in detail the viability and impact of implementing a "residential care voucher" in Hong Kong when it deliberated on the Consultancy Study Report on Residential Care Services for the Elderly (Consultancy Study) in 2009.

The Consultancy Study pointed out that promoting "ageing in place" was a global trend. While there were many overseas examples of using "cash voucher" to provide community care services (CCS) for the elderly, there were very few cases of using "cash voucher" to subsidize elders' residence in RCHEs. Besides, having regard to the fact that the institutionalization rate of elders in Hong Kong was on the high side, and that cash voucher would probably prompt more people to opt for RCS prematurely or when they had no such need, the Consultant had reservation about introducing "residential care voucher" at this stage, and recommended that the Government should promote a balanced development of CCS and RCS first.

EC generally agreed with the Consultant. It opined that before implementing any form of "cash voucher", we should ensure that the market have available different kinds of elderly care services that suit elders' needs, enabling them to make the most suitable choices, and thereby allowing those with genuine needs for RCS to be allocated residential care place more quickly.

To this end, the Government is planning for a pilot scheme on CCS voucher for the elderly to try using this new funding mode to further promote the development of CCS.

(d) At present, there is a licensing system to regulate RCHEs under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) (the Ordinance). The Director of Social Welfare has also issued a Code of Practice for Residential Care Homes (Elderly Persons) under section 22(1) of the Ordinance to ensure that the premises, design, staffing, operation, management, and so on, of licensed RCHEs comply with the licensing requirements, and that RCHEs have the necessary resources to attend to the care needs of their residents and to provide a safe and hygienic living environment for them.

The Licensing Office of Residential Care Homes for the Elderly (LORCHE) of the Social Welfare Department (SWD) inspects RCHEs pursuant to section 18 of the Ordinance. At present, LORCHE conducts, on average, seven surprise inspections to each private RCHE per year. The frequency of inspections would be adjusted based on the past service performance and risk level of individual RCHEs.

The SWD has been implementing various measures to encourage RCHEs to enhance their service quality. For instance, private RCHEs which can enhance their services (including staffing and spatial standards) to the specified standard can participate in the Enhanced Bought Place Scheme (EBPS) and offer their places for purchase by the Government. Since the entire RCHE has to comply with the specified service standard before joining EBPS, users of non-bought places in the RCHE could also benefit. We also encourage those RCHEs which are providing EA2 places under EBPS to raise their service quality to the higher EA1 standard. To this end, the Government has earmarked funding in 2012-2013 to purchase about 600 places which have been upgraded from EA2 to EA1 level.

In addition, the SWD has been implementing the Pilot Scheme on Visiting Pharmacist Services for RCHEs since 2010 to enhance the drug management capabilities of RCHEs and their staff. The SWD also promulgates guidelines for RCHEs on various topics related to the management of RCHEs and elderly care; provides training for

RCHEs staff on a regular basis to enhance their knowledge and skills in elderly care; and works closely with the Department of Health and Hospital Authority in devising service guidelines and making case referrals. All these measures help enhance the quality of RCHEs.

Prevention of Internet Addiction Among Young People

11. **MR CHAN KIN-POR** (in Chinese): *President, in recent years, the Government has stepped up its efforts in promoting the development of information technology, and adopted digital inclusion initiatives to encourage more people to learn how to use computers and surf on the Internet. However, as revealed by a survey, quite a number of people in Hong Kong have become addicted to Internet surfing, indulging themselves in the virtual world and being unable to extricate themselves from it, and conflicts between the young people and their family members arising from their indulgence in Internet surfing are very common. According to the survey findings released by the Against Child Abuse early this year, 36% of the students surveyed had conflicts with family members because of their indulgence in Internet surfing. Moreover, as revealed in the survey findings released by the Hong Kong Federation of Youth Groups recently, 47% of the young people surveyed had conflicts with their parents at least once a week, and the main reasons for that included their behaviour of surfing on the Internet or playing electronic games. In this connection, will the Government inform this Council:*

(a) whether the authorities have conducted any study or analysis on the situation of Internet addiction among young people and its impact (including addicts' physical and mental development and their relationship with family members); if they have, of the findings; if not, whether they will consider conducting such studies;

(b) whether the digital inclusion initiatives (for example, the Internet Learning Support Programme) implemented by the authorities have included any measure to prevent Internet addiction among students; if not, whether they will consider including such measures; and

(c) whether the authorities will consider providing young Internet addicts with comprehensive professional treatment services, and introducing measures to prevent Internet addiction among young people; if not, of the reasons for that?

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, with the rapid development of information technologies in recent years, web surfing has become an indispensable part of young people's life. However, the virtual world of the cyberspace is a place of hidden risks for young people. In recent years, delinquent behaviours related to web surfing, such as compensated dating among teenage boys and girls, cyber bullying and online suicidal pact, and so on, have aroused wide concern in society. Different policy areas are concerned with the problem of internet addiction among young people, and these are being addressed by the respective bureaux.

Having consolidated the information of the bureaux concerned, our reply to Mr CHAN Kin-por's question is as follows:

(a) The Office of the Government Chief Information Officer (OGCIO) launched the one-year "Be NetWise" Territory-wide Internet Education Campaign (the Campaign) in 2009 to 2010 to raise awareness among youngsters as well as their parents and teachers on safe and proper use of the Internet. During the campaign, OGCIO commissioned the Department of Social Work and Social Administration of the University of Hong Kong to conduct a study on how parents guide and supervise their children in using the Internet, with a view to comparing the perceptions of parents and children on the risks and proper behaviours on using the Internet. The study researched into, among other subjects, the problem of Internet addiction and found that over 10% (11.3%) of the youngsters interviewed were facing the risks of Internet addiction. In addition, the study revealed that Internet addiction has a strong correlation with factors including family relationship and the parenting modes, and so on. On the other hand, peer relationship helps reduce the risks of Internet addiction among the youngsters.

The detailed report can be downloaded from the website of the Campaign <http://www.benetwise.hk/internetstudy.php>.

(b) The Government launched the five-year "i Learn at home" Internet Learning Support Programme (the Programme) in July 2011 to help students from low-income families undertake web-based learning at home. Apart from assisting eligible families to acquire affordable computers and Internet access services, the Programme also provides these families with user and social support, including training on the safe and proper use of the Internet. In addition, as required by the Programme, the implementing organizations have set up hotlines to provide counselling services to help students and their parents deal with online behavioural problems including Internet addiction. Referral to social workers will be arranged where necessary. For other students and parents from non-low-income families, similar hotline services have also been arranged through the Education Bureau.

(c) Apart from the services mentioned in part (b) of the reply, the Social Welfare Department (SWD) has been providing young people with a range of preventive, developmental and remedial services to help them build up positive values and prevent them from having delinquent behaviours including Internet addiction, during their developmental stage. The services concerned include the "one school social worker for each secondary school" scheme implemented in all secondary schools over the territory to offer appropriate support and counselling to students in need, such as guiding them to use the Internet properly. The SWD has also subvented 138 integrated children and youth services centres across the territory to provide young people with socialization programmes and holistic supportive services at the neighbourhood level which include prevention of Internet addiction among young people and supportive services assisting parents to deal with their children's problem on Internet addiction, and so on. In addition, there are currently 62 integrated family service centres in all districts over the territory which provide a continuum of preventive, supportive and remedial services to families in need, including counselling services for tackling parent-child relationship problem.

Rainstorm Warning System

12. **MR CHEUNG HOK-MING** (in Chinese): *President, since the onset of the rainy season in April this year, the Hong Kong Observatory (HKO) has issued the amber rainstorm signal (amber signal) many times, indicating that heavy rain exceeding 30 mm in an hour has fallen or is expected to fall generally over Hong Kong; and when the amber signal was in force, severe flooding occurred in many places in Hong Kong. Some members of the public have also reflected that the actual rainfall in their districts was heavier than the aforesaid level, and they are worried that the alert given by the amber signal is not accurate enough. In this connection, will the Government inform this Council:*

(a) of the total number of amber signals issued by the HKO in the past three years; and when the amber signals were in force, the number of districts among the 18 District Council districts where the actual rainfall exceeded 50 mm in an hour and the respective numbers of flooding reports in various districts;

(b) whether the authorities have considered making reference to the practice of issuing Special Announcement on Flooding in northern New Territories and issuing district-based rainstorm and/or flooding warning to members of the public in selected districts, so as to more accurately alert members of the public that heavy rainstorm is expected soon; and

(c) given that the three-tier rainstorm warning system has been implemented for many years, whether the authorities have considered reviewing the system, including the code of practice at work as well as the arrangements for schools to follow in times of rainstorms?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, our response to the enquiries raised by Mr CHEUNG Hok-ming is as follows:

(a) When 30 to 50 mm of rainfall per hour has fallen or is expected to fall generally over Hong Kong, and where the downpour is likely to persist, the HKO will consider issuing the amber signal. Since June 2009, the HKO has issued amber signals on 36 occasions, excluding those situations that subsequently developed into red or black rainstorm signals. On each of these 36 occasions, about two of the 18 districts on average recorded a rainfall of more than 50 mm per hour (there were seven times where no district recorded a rainfall amount that exceeded that threshold). During these 36 occasions, the Drainage Services Department received a total of 32 flooding reports, 26 of which were from the New Territories. A breakdown is at the Annex.

(b) The northern New Territories has a relatively large water catchment area as well as a flat terrain. Such being the case, it takes a longer time for the rainwater to drain away. The Special Announcement on Flooding in Northern New Territories aims to alert the public that heavy rain may cause flooding in the low-lying areas. In addition to this Special Announcement, the Administration has enhanced the rainstorm warning messages since the rainy season this year, to alert residents in the proximity of watercourses to take timely precautions against any flash floods that heavy rain may cause. The Administration will also continue to examine the feasibility of issuing special announcements on flooding in specific areas.

(c) Apart from raising public awareness in a timely manner, the three-tier rainstorm warning system also ensures a state of readiness among the government departments and service organizations concerned to deal with emergencies. The HKO reviews the arrangements with relevant departments before every rainy season.

As regards work and school arrangements, the relevant Policy Bureau and department have provided the following information:

(i) The Labour Department (LD) has published a "Code of Practice in times of Typhoons and Rainstorms" to provide advice and guidelines to employers and employees on matters such as reporting for duty as well as release from and resumption of work.

The LD will keep reviewing the Code in the light of practical experience so that it meets the needs of both employers and employees;

(ii) The Education Bureau has issued circulars to provide schools, parents and students with guidelines on continuation or suspension of classes, students going to school or returning home as well as arrangements on picking-up of students when rainstorm warnings are in force. Every year, leaflets and bookmarks on school arrangements in response to rainstorm warnings are provided by the Education Bureau to schools for distribution to new students for their parents' reference. Before the rainy season, the Education Bureau will also join hands with the HKO in arranging talks for primary school students and their parents in all the districts with a view to explaining the weather warning system and class suspension arrangements under inclement weather. The Education Bureau also reminds schools to issue circular letters to parents and school staff, making sure that they fully understand the above arrangements and the contingency plans of individual schools.

The Education Bureau has revised its guidelines in the light of feedback received. It will continue to draw on experience gained and keep the guidelines under review.

Annex

Number of Flooding Reports
in Different Districts since June 2009

District	*Number of Flooding Reports*
New Territories	
North District	8
Yuen Long	11
Tai Po	1
Tuen Mun	-
Islands	-
Tsuen Wan	2
Kwai Tsing	-
Sha Tin	2
Sai Kung	2
Kowloon	
Kowloon City	1
Kwun Tong	-
Sham Shui Po	1
Yau Tsim Mong	1
Wong Tai Sin	2
Hong Kong Island	
Central and Western District	-
Eastern District	-
Southern District	1
Wan Chai	-

Allocation of Secondary One Places

13. **MR LEUNG KWOK-HUNG** (in Chinese): *President, recently, quite a number of parents of primary students, in particular those in Ma On Shan of Sha Tin, and members of Parent-Teacher Associations have relayed to me that the teachers in the primary schools of their children who will move up to Secondary One in September this year have called on them, with coercion and inducement, to choose the secondary schools recommended by the class teachers during the*

discretionary places (DP) allocation stage and central allocation (CA) stage, with a view to increasing the percentage of their students moving up to those secondary schools (top band schools) which admit mainly Secondary One students belonging to Band One. These parents have also pointed out that those teachers have deliberately smeared or played down certain secondary schools in order to make the parents accept the teachers' recommendations. Quite a number of these parents have relayed to me that schools and parents have different interpretations about school banding while the Education Bureau has not provided the list of secondary school of various banding, leaving the schools and parents not knowing what to follow, as well as giving rise to various disputes. In this connection, will the Government inform this Council:

(a) *whether the Government will make changes to the existing system to inform students and parents of the outcome immediately upon the completion of the DP allocation stage by secondary schools, so that parents and students need not worry about their choices of schools at the CA stage any more or have unnecessary disputes with the primary school teachers; if it will, of the time to do so; if not, the reasons for that;*

(b) *whether the Government has any measure in place to monitor serving primary school teachers to prevent them from adopting different approaches to request parents to choose the secondary schools recommended by the teachers during the DP allocation stage and CA stage, oblivions to parents' wishes and students' abilities, and also to prevent such teachers from misleading the parents into accepting their recommendations by smearing or playing down certain secondary schools, with a view to increasing the percentage of their primary students moving up to top band schools; if it has, of the details; if not, the reasons for that;*

(c) *of the respective percentages of primary students being allocated by the Education Bureau to secondary schools belonging to Bands One, Two and Three in Sha Tin, Tai Po, the North District and Sai Kung in the past three years, with a breakdown in the table below; and*

Year	*District*	*Name of secondary school*	*Percentage of the number of admitted Secondary One students belonging to Band One in the total number of students in this band*	*Percentage of the number of admitted Secondary One students belonging to Band Two in the total number of students in this band*	*Percentage of the number of admitted Secondary One students belonging to Band Three in the total number of students in this band*

(d) whether the Government will immediately upload to the website of the Education Bureau the respective percentages of Secondary One students belonging to Bands One, Two and Three admitted to various secondary schools each year to facilitate access by parents; if it will, of the time to do so; if not, the reasons for that?

SECRETARY FOR EDUCATION (in Chinese): President,

(a) The Education Bureau is open-minded as to whether the arrangement of releasing the results of DP allocation and CA at the same time should continue under the Secondary School Places Allocation (SSPA) System. In this regard, the Education Commission Working Group when reviewing the SSPA System in 2005 had consulted stakeholders on the early release of DP allocation results as suggested by some parents(1). After careful consideration and explanation to parents, we were of the view that this was a well-established practice. On the other hand, allowing some students in a class to know the DP application results in advance might lead to an undesirable labelling effect and give rise to adverse impact on the overall learning atmosphere.

Starting from 2007, the DP quota for each school has been raised to 30%, and the number of secondary schools that parents and students can choose has also been increased to two (with the order of

(1) Chapter 6 of the "Report on Review of Medium of Instruction for Secondary Schools and Secondary School Places Allocation" published in December 2005 is relevant and extracts are at the Annex.

preference indicated to the Education Bureau). According to the existing workflow, it is estimated that DP results could be announced at the earliest in late May or early June each year after secondary schools' verification of the students selected to fill their DP. By then, Primary Six students should have already completed the Choice of Schools Forms for the CA stage to tie in with the release of results in early July. As such, there is little room for and benefit in early release of DP results. In fact, the issue has been considered by the Secondary School Places Allocation Committee comprising representatives from school councils/associations and schools in the districts. Acknowledging that the prevailing arrangement can better balance the aspirations of different stakeholders and align with the operation of schools, the committee has also agreed to maintain the existing practice to ensure the smooth operation of the SSPA System.

(b) To be in line with the School Development and Accountability Framework, schools should disseminate information in a professional manner, irrespective of the means to be adopted in dissemination such as through school websites, parents' briefings on Secondary One school choices, and so on, so as to ensure transparency of information and refrain from over-simplification to avoid possible misleading among parents.

We have reminded primary schools of the important points to note when offering school choice counselling for parents in the briefings organized for primary schools on Secondary One admission every year. The School Places Allocation Section of the Education Bureau has set up a dedicated hotline for parents in order to co-ordinate and monitor the operation of the SSPA System while advice and guidance to schools will be offered as appropriate. Besides, we organize a series of parent briefing sessions every year, inviting school principals/teachers to join us in educating parents on how to learn more about individual schools and from different perspectives in order to make appropriate school choices, taking into account the interests, needs and abilities of their children.

We have not received any complaints about primary school teachers influencing parents' school choices this year. We will continue to strengthen parent education so that parents understand that they should gather comprehensive information about individual schools for making balanced decisions on school choices for their children.

(c) Each year, the Education Bureau provides individual schools with information of the overall banding(2) of their Secondary One intakes with a view to enabling schools to have a general idea about the abilities of their Secondary One students, thus facilitating the formulation of teaching strategies including support measures for remedial and enrichment purposes to better meet the needs of their students. Since the banding information is prepared specially for individual schools with reference to their Secondary One intakes, it is possessed by the schools concerned and, according to paragraph 2.14(a) of the Code on Access to Information, the Education Bureau should not disclose the information. In tandem, the schools have also signed an undertaking pledging not to disclose the information.

(d) The banding information on Secondary One intakes of individual school is generated from data which has been adjusted and converted in the allocation process. There is a consensus of not disclosing the information so as to avoid the information being inadvertently interpreted as an indicator of school quality with unnecessary labelling effect and undue pressure on teachers and students.

(2) Primary schools participating in the SSPA System are required to submit to the Education Bureau their students' internal assessment (IA) results at the end of Primary Five, in mid-year of Primary Six and at the end of Primary Six. IA results will be standardized by a computer programme to generate the "total IA score" of each student in each school term. To facilitate comparison across schools and formation of a fair order of merit, which will form the basis for determining allocation bands, a scaling mechanism is used to scale the "total IA scores" of the students of participating schools. The scaled scores of the three terms will then be averaged to give the "average total scaled scores". According to their "average total scaled scores", all students in the territory/in each school net will be put into an order of merit and are equally divided into three Territory Bands/Net Bands.

Annex

Extracts from Report on
Review of Medium of Instruction for Secondary Schools and
Secondary School Places Allocation

Chapter 6 Secondary School Places Allocation Mechanism: The Way Forward

6.6 Besides, **some parents wish that the EMB could release the DP results once available**, rather than announcing the results together with the CA results. They hope that early release of the DP results could save their efforts in making school choices at the CA stage.

. . . .

6.8 As for the early release of DP results, primary schools generally object to this suggestion which, in their opinion, may unnecessarily bring about problems in teaching and learning. They are particularly concerned about **the impact on the overall learning atmosphere if some students within a class know the DP application results "in advance"**. As a matter of fact, the existing arrangement of announcing the DP and CA results concurrently is well-established and has been implemented smoothly for years. During the consultation sessions, the Working Group explained to parents the concerns of schools. Many parents showed understanding and agreed that the effectiveness of teaching and learning should override their personal conveniences.

Rights of Same-sex Cohabitants

14. **MR CHEUNG KWOK-CHE** (in Chinese): *President, same-sex cohabitation relationship was put under the scope of protection of the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) (the Ordinance) in 2009. Quite a number of people in the society who have doubts about their sexual orientation and are inclined to develop same-sex intimate relationship or same-sex cohabitation relationship have indicated that they may encounter some difficulties when they tell their family members and friends about their sexual*

orientation, and face adverse labelling in the society, and thus they may have more social service needs in respect of their emotions as well as social interactions. Data from local and international studies have also shown that, since homosexuals belong to a minority group in the society and are being discriminated against, they have more social needs than people in general in the society. Quite a number of homosexuals have reflected that at present, the Social Welfare Department (SWD) has not subsidized any service, which is provided to meet the specific needs of homosexual groups, and the existing mainstream social services cannot meet their needs. In this connection, will the Government inform this Council:

(a) whether the authorities have conducted surveys on the number of same-sex cohabitants in Hong Kong and their social needs; if they have, of the number in the past three years; whether statistics on the number of same-sex and opposite-sex cohabitants and their households are collected in the population census at present; if so, of the details; if not, whether the authorities will collect such data in the next population census;

(b) of the respective numbers of same-sex cohabitants who had sought assistance from government agencies and social service organizations in respect of domestic violence since the Ordinance came into operation in 2009; whether the authorities have conducted any publicity or provided educational resources to encourage same-sex cohabitants suffering from domestic violence to seek assistance; and

(c) of the number of cohabiting same-sex couples who had received social services from government agencies and subsidized agencies last year; whether the Government will consider following the practice of providing services to meet the specific needs of ethnic minorities, and provide services that meet the specific needs of homosexual groups; if it will, of the details; if not, the reasons for that?

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to Mr CHEUNG Kwok-che's question is as follows:

(a) The Government has not conducted any survey on the number of same-sex cohabitants in Hong Kong and their social needs. In the past population censuses/by-censuses conducted by the Census and Statistics Department (C&SD), no information on same-sex and opposite-sex cohabitants had been collected.

The next Population By-census will be conducted in 2016. When planning for the By-census, the C&SD will, in the light of the latest socio-economic developments in Hong Kong, consult relevant government bureaux and departments, academic institutions, chambers of commerce and non-governmental organizations on the statistical topics. The C&SD will examine the views collected and consider the need for including new topics in the By-census. Other factors to be considered will include whether the use of data is extensive, the availability of alternative sources and channels of data collection, the willingness of respondents to provide answers, the possibility of collecting accurate data, as well as the prevailing international practices and standards.

(b) The Ordinance came into effect in January 2010, extending the protection under the Ordinance to cover same-sex cohabitants. As at the end of March 2012, five newly reported cases involving violence among same-sex cohabitants were captured by the Central Information System on Spouse/Cohabitant Battering Cases and Sexual Violence Cases.

The SWD has sought to enhance public understanding of the scope of protection of the Ordinance through different channels, including the District Liaison Groups on Family Violence, the District Co-ordinating Committees on Family and Child Welfare Services, talks and district activities, and so on, so as to help victims of domestic violence (including same-sex cohabitants) understand their rights, protection provided by law and relevant support services. Besides, representatives of the Labour and Welfare Bureau and the

SWD attended the Sexual Minorities Forum organized by the Constitutional and Mainland Affairs Bureau in December 2009 to brief relevant organizations and groups on the contents of the Ordinance, as well as the support services available to the victims.

On its information leaflet and webpage on support for victims of family violence, the SWD has also pointed out that support services are available to victims of domestic violence, regardless of their sex, ethnic origin and sex orientation. The SWD will continue with its public education and publicity efforts to enhance public awareness of the issue of domestic violence and encourage those in need to seek early assistance.

(c) The objective of services provided by the SWD and its subvented organizations is to provide appropriate assistance to all people in need irrespective of their sexual orientation. Taking into account the privacy concerns and feelings of the service users, the SWD has not required its service units and subvented organizations to collect information on the sexual orientation of the service users.

The Government has established the Equal Opportunities (Sexual Orientation) Funding Scheme, the objective of which is to provide funding support to worthwhile community projects which aim at promoting equal opportunities on grounds of sexual orientation or gender identity, or seek to provide support services for sexual minorities.

Land Supply in Hong Kong

15. **MR RONNY TONG** (in Chinese): *President, the Government has indicated that in response to future population growth, it is necessary to formulate a policy to build up land reserve so as to meet housing demand and demand from daily lives, and therefore the plan of reclamation outside Victoria Harbour is proposed. However, the proposal under this plan to alter the shoreline has aroused strong dissatisfaction among residents in Tseung Kwan O*

and Ma On Shan, who demand exclusion of the two areas from the reclamation project. Furthermore, some villagers who are affected by the land development projects in the rural areas reject the acquisition of their residences and land by the project implementers because such acquisition will affect their ways of life over the years. In this connection, will the Government inform this Council:

(a) how the Government will respond to the public's dissatisfaction over the reclamation project after the completion of the Stage 1 consultation on the land supply strategy of reclamation outside Victoria Harbour; whether the Government will shelve the reclamation project; if it will not, of the reasons for that;

(b) given that the Government has introduced the Enhancing Land Supply Strategy and confirmed the acquisition of agricultural land in the New Territories as one of the means for building up land reserve, yet some people damage the ecology of the agricultural land and the farmers' livelihood by means such as setting up container yards and dumping wastes into rivers illegally, in the hope that their land will be acquired or the land use will be changed, and such complaint cases are abundant in the North East New Territories New Development Areas and the Ngau Tam Mei village in Yuen Long, whether the authorities have received complaints about people damaging the land first and leaving it abandoned later during resumption of rural land; if they have, of the number and contents of such complaints in the past five years; if not, whether they have considered setting up a complaint task force to handle cases of land resumption by unscrupulous means; and

(c) given the authorities' indication that in 2039, Hong Kong will at least need an extra of 4 500 hectares of land to meet the demand from its population, and will thus increase land supply through the Enhancing Land Supply Strategy (including measures such as land resumption, reclamation, redevelopment, rezoning, re-use of ex-quarry sites and rock cavern development, and so on), whether the Government has other means to increase land supply when the

"multi-pronged" approach fails; if it has, of the contents of its plans; if not, the reasons for that?

SECRETARY FOR DEVELOPMENT (in Chinese): President, the Government is committed to expanding land resources for Hong Kong through a multi-pronged approach to build up land reserve with a view to meeting housing, social and economic development needs. To provide adequate usable land to meet our long-term needs, we have to adopt a flexible mix of land supply options. In this connection, the 2011-2012 Policy Address put forward six measures, including releasing industrial land; exploring the option of reclamation on an appropriate scale outside the Victoria Harbour; exploring the use of rock caverns to reprovision suitable existing public facilities and releasing such sites for housing development; looking into the use of green belt areas that are devegetated, deserted or formed; examining "Government, Institution or Community" sites; and exploring the possibility of converting into housing land some agricultural land in North District and Yuen Long currently used mainly for industrial purposes or temporary storage, or which is deserted.

In November 2011, the Government launched the Stage 1 Public Engagement exercise on Enhancing Land Supply Strategy for the purpose of consulting the public on the study of reclamation on an appropriate scale outside the Victoria Harbour and the use of rock caverns. In January 2012, the Civil Engineering and Development Department announced 25 possible reclamation sites for consideration. These sites were put forward as a means to facilitate public discussion on the site selection criteria on a more substantial basis and was not meant to confirm the locations of reclamation. In fact, up to now, the Government has yet to decide whether to carry out reclamation outside the Victoria Harbour and the criteria to be adopted in selecting sites for reclamation. The potential types and locations of reclamation can also be revised in light of public views.

My reply to the three parts of the question is as follows:

(a) The Stage 1 Public Engagement exercise was concluded in March 2012. More than 10 000 responses to the questionnaire and

telephone poll and over 40 000 written submissions were received from various sources. Many of them were related to the 25 possible reclamation sites. We are now compiling and analysing the views collected so as to come up with a shortlist of possible reclamation sites for further technical studies. We understand that members of the public have strong views on individual reclamation sites. In our subsequent technical studies and site selection exercise, we will attach importance to the selection criteria regarding community impact, taking public views into full consideration. We plan to publish in the second half of 2012 the report on the opinion survey conducted during the Stage 1 Public Engagement exercise. At the same time, we will propose a number of sites which can be further considered for reclamation and rock cavern development, with a view to commencing the Stage 2 Public Engagement exercise.

(b) The Administration has been closely monitoring land uses in the New Territories. Apart from new town developments already completed and large-scale developments currently under planning, we are also making continuous efforts to identify other sites available for development. These include exploring the use of abandoned or under-utilized rural land for residential development. However, the Administration does not resume agricultural land as one of the means for building up land reserve. We also do not have details on complaints about the so-called "damaging the land first and leaving it abandoned later" scenario arising from the resumption of rural land.

(c) As mentioned above, we have been implementing, with continued efforts, various measures to expand land resources. Furthermore, a number of land use studies and reviews involving about 2 500 hectares of land are being conducted by the Planning Department. These should be conducive to increasing land supply in the short, medium and long terms. Outcomes have been achieved and progresses have been made in some areas.

For the short term, we have completed the reviews on industrial land and "Government, Institution or Community" sites as well as the first

phase review of green belt areas. For the medium and long terms, major planning and engineering studies for sites such as the North East New Territories and Hung Shui Kiu New Development Areas and the remaining development in Tung Chung New Town are in progress. Planning and engineering studies for the Anderson Road Quarry and the Ex-Cha Kwo Ling Kaolin Mine have also commenced, with community involvement and consultation exercises in the pipeline.

We will strive to complete the relevant work as soon as possible so as to release the land in the areas concerned for development. At the same time, we will also actively consider other possible ways to increase land supply, such as continuing to liaise with the MTR Corporation Limited to explore sites along railways which can be further developed.

Concentration Limits of Pollutants Under Air Quality Objectives

16. **MR ABRAHAM SHEK**: *President, the Government proposed in January 2012 a set of new Air Quality Objectives (AQOs) which lays down the atmospheric concentration limits for seven pollutants together with a host of air quality improvement measures to help Hong Kong achieve the AQOs. However, in the new AQOs, the concentration limits of four pollutants (that is, sulphur dioxide (SO2) (24-hour mean), ozone, respirable suspended particulates (hereinafter referred as "PM10") and fine suspended particulates (hereinafter referred as "PM2.5") (annual-mean and 24-hour mean)) fail to match the highest levels prescribed in the World Health Organization (WHO)'s Air Quality Guidelines (AQGs) published in 2006, and the green groups have criticized the Government for taking a "half-hearted" approach to implement the air quality improvement measures. In addition, it has been reported that according to the China Statistical Yearbook 2011, Hong Kong's nitrogen dioxide (NO_2) level ranks 31st out of 32 major cities in China. In this connection, will the Government inform this Council:*

(a) whether the Government has considered the public health impact with limits of SO2 (24-hour mean) and PM2.5 benchmarked against

the WHO's Interim Targets and AQGs; if it has, of the details; if not, the reasons for that; whether it knows any details of affirmative overseas examples in which limits comparable to those in the new AQOs are adopted; of the principles considered and views from the public consultation in 2009 which affirm the proposed limits;

(b) given that it has been reported that the Ministry of Environmental Protection on the Mainland has proposed a tougher limit for NO_2 than that of Hong Kong, whether it will consider imposing a standard at least on par with that proposed by the Ministry; if it will, of the details; if not, the reasons for that;

(c) whether it has considered the difficulties construction projects will encounter and additional compliance cost they will incur in securing approval against the new AQOs under the Environmental Impact Assessment Ordinance (Cap. 499), including but not limited to, as reported, the proposed construction of the third runway at Hong Kong International Airport the emission level of NO_2 of which may exceed the proposed limit; if it has, of the details with any follow-up mitigation measures taken in alleviating the situation; and

(d) given the absence of any government figures in evaluating the public health impact of air pollution, whether the Government has considered establishing a mechanism similar to the Hedley Environmental Index in assessing the public health impact of air pollution and publicizing the real-time information on the impact; if it has, of the details with the expected cost and manpower resources involved; if not, whether it has considered any ways besides the established measures in enhancing public awareness of the health impact of air pollution?

SECRETARY FOR THE ENVIRONMENT: President,

(a) In setting our new AQOs, we have made reference to the recommendations of the WHO as well as the standards of other

advanced places. When the WHO published its new AQGs, it also reminded governments that they should consider their own local circumstances carefully before using the guidelines directly as legal standards. It also pointed out that the standards set in each country will vary according to specific approaches to balancing risks to health, technological feasibility, economic considerations and other political and social factors. In fact, the WHO also recommends interim targets as incremental steps in a progressive reduction of air pollution in more polluted areas and to promote a shift from concentrations with acute, serious health consequences to concentrations that if achieved, would result in significant reductions in risks to health. Such progress towards the guideline values should be the objective of air quality management and health risk reduction in all areas.

The AQOs we are proposing have been drawn up in accordance with the above WHO guidelines. As far as we know, no country has fully adopted the WHO's ultimate guidelines values as their statutory air quality standards. Apart from suspended particulates which are under strong regional influence, our new AQOs are on par with those of other advanced countries, such as the European Union (EU) and the United States. We have adopted the WHO's ultimate AQGs in their entirety for three of the seven major pollutants (that is, NO_2, carbon monoxide and lead) and in part for another pollutant (that is, SO2).

In addition, we will review every five years the feasibility of tightening the AQOs and formulate corresponding air quality improvement plans.

As for SO2, the 10-minute limit in the proposed AQOs has already benchmarked against the AQG of the WHO and the 24 hour-limit is same as that of the EU (that is, IT-1 of the WHO), which is on a par with the standard currently adopted by advanced countries/economies. This has been reduced by more than 60% comparing to the existing AQO value.

We note that our PM2.5 level has been under strong regional influence. The particulate matter emissions of Hong Kong and the Pearl River Delta Region are in the proportion of 1:99. The particulate concentrations of Hong Kong are, therefore, under strong regional influence. While we and the Guangdong Provincial Government have already endeavoured to implement a number of measures to improve regional air quality, taking into account the regional influence, we would not able to update the AQOs for suspended particulates with just one go, but have to take a more practical approach. We propose the WHO IT-2 for PM10 be adopted. With PM2.5 accounts for about 70% of PM10 found in Hong Kong, we propose to benchmark its level at the WHO IT-1.

(b) The new national standard for annual NO_2 proposed by the Ministry of Environmental Protection is the same as ours and the WHO's ultimate AQG. In addition, the WHO currently has not established any 24-hour limit for NO_2. Our practice is in line with other countries such as the EU, the United States and Australia.

(c) Following the introduction of the new AQOs, to obtain the environmental impact assessments approval, it will be necessary for designated projects to demonstrate their air quality impacts will meet the new legal standards. When updating the AQOs, the Government has also put forward a basket of 22 new air quality improvement measures to help reduce ambient air pollutant levels. At the same time, when the proposed objectives have become legal standards, designated projects have to implement adequate and appropriate mitigation measures in areas of design, construction and other operation standards, where necessary, to meet the legal requirements.

(d) Implementation of the proposed new AQOs and air quality improvement measures will help alleviate air pollution problems and bring about health benefits, including reduction of number of people admitting to hospitals due to asthma or other respiratory illnesses. According to the Consultant's study report, implementation of the

recommended Phase 1 emission control measures would lead to an anticipated benefit of about $1,228 million annually due to improvement in public health, which is significantly higher than the estimated annualized cost of about $596 million to be incurred by the society. The Consultant also estimated that some 4 200 hospital admissions could be avoided because of the improvement measures. In addition, the average life expectancy of the population would be increased by about one month or around 7 400 "life years" saved each year. In addition, the existing Air Pollution Index (API) has been providing a simple way of describing air pollution levels in Hong Kong. To tie in with the updating of the AQOs, we will correspondingly review and improve the existing API system.

Handling of Torture Claim Cases

17. **DR PRISCILLA LEUNG** (in Chinese): *President, the United Nations' Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) has been applied to Hong Kong since 1992, and non-Hong Kong residents in Hong Kong may make torture claims to the Immigration Department (ImmD). In this connection, will the Government inform this Council:*

(a) of the number of torture claim cases received by the ImmD in each of the past three years; the main nationalities of such torture claimants (claimants); the number of cases pending assessment to date; the number of persons who had withdrawn their claims on their own or requested to return voluntarily to their places of origin during the period; the number of claims assessed in the past three years, and among them, the number of claims substantiated; the average time required for assessing a claim, as well as the administrative and legal aid expenses required for a claim; the follow-up arrangement generally made by the authorities in respect of claimants of unsubstantiated claims;

(b) of the expenses on providing support to claimants by the authorities in the past three years to meet the basic needs of their daily lives; the number of persons who had received such support;

(c) of the number of cases of the overseas domestic helpers working in Hong Kong making torture claims in the past three years; whether there was a rising trend; among these cases, of the number of claimants permitted to stay in Hong Kong because their torture claims had been substantiated;

(d) of the number of claimants in Hong Kong who had been arrested for committing various types of criminal offences in the past three years, and the major offences committed by them; of the number of such claimants who were convicted; and

(e) whether the authorities have any mechanism in place at present for following up or recording the conditions of the daily lives and accommodation of each claimant during the period of waiting for assessment in Hong Kong; if so, of the percentage of cases in which contact with the claimants was lost in the total number of cases; whether the authorities will review the existing policy (including examining the establishment of facilities for sheltering such claimants) to facilitate follow-up actions; if they will not, of the reasons for that?

SECRETARY FOR SECURITY (in Chinese): President, the ImmD is responsible for handling torture claims made under the United Nations CAT. From 1992 to 2008, the ImmD has received a total of 4 574 claims. In December 2008, the ImmD suspended the screening process following a court judgment on a judicial review case regarding the screening procedures. In December 2009, the ImmD resumed screening under the enhanced mechanism.

My reply to the various parts of the question is as follows:

(a) The number of new torture claims received in 2009, 2010 and 2011 was 3 286, 1 809 and 1 432 respectively. Another 468 claims were received in the first five months of 2012. Together with claims received in or before 2008, we have received a total of 11 569 torture claims so far. Claimants mainly came from countries in South or Southeast Asia, including Pakistan (30% of all claims), India (20%), Indonesia (14%), Bangladesh (11%), and so on.

Out of all claims, the screening of 3 903 cases was terminated since the claimants had withdrawn their claims or departed from Hong Kong. The ImmD has completed screening of 1 865 claims under the enhanced screening mechanism, with no substantiated case(1). At present, around 5 800 claims are pending screening.

In general, for simple cases with no appeals lodged, the screening process can be completed in three to four months. If claimants lodge appeals against the ImmD's decision, it would take five to six months to complete the screening process. In the year 2011-2012, the ImmD has completed screening of 1 200 cases. In the same year, the Administration's expenditure on staff cost for handling torture claims and provision of publicly-funded legal assistance was $146 million in total. For persons whose claim is not substantiated, the ImmD will arrange for the removal of that person to his place of origin as soon as practicable.

(b) The Administration provides humanitarian assistance (including accommodation, food, clothing, other basic necessities and transportation fees, and so on) to claimants or asylum seekers in need through non-government organizations. As at the end of the years 2009-2010, 2010-2011 and 2011-2012, respectively 5 258, 5 825 and 5 703 persons were receiving such assistance. The corresponding expenditure on humanitarian assistance was respectively $124 million, $151 million and $143 million.

(1) Only one case was substantiated before December 2009.

(c) In 2009, 2010 and 2011, the number of new torture claims lodged by former foreign domestic helpers was 478, 606 and 437 respectively. There was no substantiated case so far.

(d) In 2009, 2010 and 2011, the number of non-ethnic Chinese illegal immigrants or overstayers released on recognizance (most being claimants) arrested for other criminal offences was 509, 735 and 674 respectively, involving mainly illegal employment, theft, assault or drug-related offences. We do not have statistics pinpointing only crimes committed by claimants.

(e) As at 31 May 2012, out of the some 5 800 claimants pending screening, 118 were being detained and the rest were released on recognizance. When being released on recognizance, claimants are required to report to the ImmD regularly and provide their latest residential address. As at the same day, among claimants being released on recognizance, 260 persons did not report to the ImmD at the specified time. The ImmD has already passed their particulars to the wanted list of the police. We will monitor the situation closely and review the arrangement as necessary.

Claims of Medical Negligence

18. **DR LEUNG KA-LAU** (in Chinese): *President, will the Government inform this Council whether it knows the details of the claims of medical negligence against the Hospital Authority (HA) in the past five years, and set out the information in the tables below:*

(a) the numbers of various kinds of cases;

Year	*2007*	*2008*	*2009*	*2010*	*2011*
Total number of cases					
Number of cases settled out of court					
Number of cases referred to mediation					
Number of cases settled out of court during mediation					

Year	*2007*	*2008*	*2009*	*2010*	*2011*
Number of cases settled out of court after mediation					
Number of cases referred to arbitration					
Number of cases settled through arbitration					
Number of cases ruled by the Court					

(b) the amounts of compensation and relevant costs in various kinds of cases; and

Year		*2007*	*2008*	*2009*	*2010*	*2011*
Total amount of compensation paid						
Amount of compensation paid in cases settled out of court						
Amount of compensation paid according to the agreements reached by mediation						
Amount of compensation paid according to arbitration awards						
Amount of compensation paid according to court rulings						
Mediation fees paid by the HA	*Mediators*					
	Lawyers					
	Others					
Arbitration fees paid by the HA	*Arbitrators*					
	Lawyers					
	Others					
Legal fees paid by the HA	*Lawyers*					
	Courts					
	*Others**					

Note:

* *excluding fees related to mediation and arbitration*

(c) the highest amounts of compensation in various kinds of cases?

The highest amount of compensation paid in a single case settled out of court	
The highest amount of compensation paid in a single mediation case	
The highest amount of compensation paid in a single arbitration case	
The highest amount of compensation paid in a single case ruled by the Court	

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, upon receipt of a case of claim arising from a medical incident, it is the usual practice of the HA to conduct an investigation and seek legal advice before responding and explaining its stance on the claim to the patient or his/her lawyer. Depending on the circumstances of each individual case, the HA will appoint a loss adjuster or lawyer to conduct negotiation for settlement of the case. In the event that court proceedings have commenced, the HA will appoint a lawyer to make defence, collect evidence, conduct mediation and negotiate a settlement, and so on, in the light of the circumstances and development of individual cases. For cases of claims received by the HA, some of the claimants may, after learning of the explanation from the HA or considering various factors, stop pursuing their claims further.

Provided below is information about cases of claims received by the HA arising from medical incidents reported under its medical incidents insurance scheme in the past five years:

(a) The numbers of various categories of cases are as follows (as at the end of December 2011):

Year in which the cases are reported[(1)]	*2007*	*2008*	*2009*	*2010*	*2011*
Number of cases of claims	133	116	150	137	86
Number of cases of claims settled out of court[(2)]	41	30	29	18	0

Year in which the cases are reported[1]	*2007*	*2008*	*2009*	*2010*	*2011*
Number of cases of claims referred to mediation[3]	2	2	3	0	0
(a) Number of cases of claims settled during mediation	0	2	2	0	0
(b) Number of cases of claims settled after mediation	2	0	1	0	0
Number of cases of claims referred to arbitration	0	0	0	0	0
Number of cases of claims settled through arbitration	0	0	0	0	0
Number of cases of claims ruled by the Court	0	0	0	0	0

Notes:

(1) The number of cases settled out of court or referred to mediation, and so on, for a particular year set out in the above table has already been included in the number of cases of claims reported for that year. For example, for cases reported in 2007, as at the end of December 2011, there were a total of 133 cases of claims received, of which 41 were settled out of court.

(2) Including cases of claims which were settled out of court after legal proceedings had commenced.

(3) The number of cases under this category has already been included in the number of cases of claims settled out of court.

(b) The amounts of compensation and relevant costs in various categories of cases (as at the end of December 2011) are as follows (all figures are round numbers and in million dollars):

Year in which the cases are reported[1]	*2007*	*2008*	*2009*	*2010*	*2011*
Total amount of compensation[2] paid in cases of claims settled out of court[3]	18.2	11.4	6.8	3.2	0
Amount of compensation paid according to arbitration awards	0	0	0	0	0

Year in which the cases are reported[(1)]	*2007*	*2008*	*2009*	*2010*	*2011*
Amount of compensation paid according to court rulings	0	0	0	0	0
Fees paid by the HA to mediators	0.017	0.014	0.039	0	0
Arbitration fees paid by the HA	0	0	0	0	0
Legal fees paid by the HA in cases of claims settled out of court	8.9	4.7	3.0	1.1	0

Notes:

(1) The amounts of compensation/costs for a particular year set out in the above table refer to the compensation/costs paid for cases of claims reported for that year as at the end of December 2011. For example, for cases reported in 2007, as at the end of December 2011, there were a total of 133 cases of claims, of which 41 were settled out of court, involving compensation totalling $18.2 million.

(2) The total amounts of compensation in this row include a sum of $3.7 million paid as compensation for cases settled during the mediation process. As the content of the compensation agreements must be kept confidential and the number of cases of claims settled during the mediation process is relatively small, we are unable to provide a breakdown on the amounts of compensation paid according to the agreements reached by mediation.

(3) Including cases of claims which were settled out of court after legal proceedings had commenced.

(c) All the above compensations are in respect of cases settled out of court. As the content of the compensation agreements for these out-of-court settlements must be kept confidential, we cannot disclose the details of individual cases.

Operating Environment of Catering Industry

19. **DR LAM TAI-FAI** (in Chinese): *President, quite a number of members of Hong Kong's catering industry have relayed to me that the inflation problem in Hong Kong has become increasingly serious, with continuous rising shop rents and prices of food materials, and coupled with the implementation of the statutory minimum wage (SMW), the operating costs of food establishments*

continue to increase; the catering industry has to face the pressure of raising prices, laying off staff and closing down businesses. In this connection, will the Government inform this Council:

(a) of the respective numbers of food establishments newly opened and closed down in each of the past five years, together with a breakdown by type of food establishments;

(b) of the respective number of people engaged in the catering industry in each of the past five years, together with a breakdown by type of food establishments;

(c) of the respective total numbers of labour disputes in the catering industry in each of the past five years, the amounts involved and the numbers of employees affected, together with a breakdown by type of food establishments;

(d) whether it knows the revenues brought to different types of food establishments in Hong Kong by visitors under the Individual Visit Scheme (IVS) each year since the implementation of the IVS in July 2003;

(e) whether it knows the total amount spent by members of the public in Hong Kong in different types of food establishments in each of the past five years, and the average percentage of the amount spent by members of the public in different types of food establishments in their income;

(f) whether it has assessed the impact of the implementation of the SMW on the operating costs and manpower of different types of food establishments; if it has, of the details; if not, the reasons for that;

(g) whether it has assessed the impact of changes in shop rents in Hong Kong on the operating costs and profits of different types of food establishments in the past five years; if it has, of the details; if not, the reasons for that;

(h) whether it has assessed the impact of changes in the prices of food materials on the operating costs and profits of different types of food establishments in the past five years; if it has, of the details; if not, the reasons for that;

(i) of the time normally taken at present for processing the required licences for various types of food establishments; whether it will conduct a study on further simplifying the relevant procedures to shorten the processing time; if it will, of the details; if not, the reasons for that;

(j) of the targeted measures put in place in the past five years to support the continuous operation and development of the catering industry in Hong Kong; and

(k) whether it has assessed the difficulties and opportunities in operations and sustainable development faced by the catering industry at present, so as to introduce targeted policies and measures to help the industry resolve the difficulties and seize the opportunities?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, regarding Member's questions and suggestions, we have followed up with the Food and Health Bureau, the Financial Services and the Treasury Bureau, the Labour and Welfare Bureau, and the Economic Analysis and Business Facilitation Unit. Our consolidated reply is as follows:

(a) The Food and Environmental Hygiene Department (FEHD) does not keep records of the number of restaurants newly opened and closed down. The number of new restaurant licences issued by the FEHD and restaurant licences cancelled/expired without renewal in the past five years, with a breakdown by the type of restaurants, is set out below:

Year	*General Restaurant*		*Light Refreshment Restaurant*		*Marine Restaurant*	
	Number of Licence Newly Issued	*Number of Licence Cancelled/ Expired without Renewal*	*Number of Licence Newly Issued*	*Number of Licence Cancelled/ Expired without Renewal*	*Number of Licence Newly Issued*	*Number of Licence Cancelled/ Expired without Renewal*
2007	640	566	320	289	0	0
2008	789	530	357	261	0	0
2009	736	569	334	286	1	0
2010	897	590	391	337	2	0
2011	828	606	350	287	0	0

(b) According to the results of the Quarterly Survey of Employment and Vacancies provided by the Census and Statistics Department (C&SD), the number of persons engaged in different types of food services establishments in the past five years are as follows:

Type of food services establishments	*Number of persons engaged*[3]				
	2007	*2008*	*2009*	*2010*	*2011*
Chinese restaurants	90 010	92 571	93 124	96 189	103 854
Non-Chinese restaurants	24 089	22 329	21 813	23 770	26 608
Fast food shops	34 911	39 665	40 472	41 023	41 611
Others[1]	48 887	47 430	45 845	47 185	48 672
Total[2]	197 896	201 994	201 254	208 167	220 744

Notes:

(1) Including cooked food stalls at food courts, takeaway shops, other cooked food outlets without seats, and so on.

(2) Individual figures may not add up to total due to rounding.

(3) Persons engaged also include, apart from employees, proprietors and partners who are actively engaged in the work of the establishment as well as persons having family ties with any of the proprietors or partners and are working in the establishment without regular pay.

(c) The numbers of labour disputes in the catering industry handled by the Labour Department (LD) in the past five years, and the numbers

of employees involved, are set out in the table below. For labour disputes in the catering industry, the LD neither has the breakdown by the types of catering establishments nor keeps statistics on the amount claimed.

Year	*2007*	*2008*	*2009*	*2010*	*2011*
Number of catering disputes[(1)] handled by the LD	21	20	33	14	25
Number of employees involved	890	819	1 588	488	1 070

Note:

(1) Cases involving more than 20 employees.

(d) Based on the Hong Kong Tourism Board (HKTB)'s dedicated survey data, the estimate incremental tourist spending contributed to the restaurants sector under the IVS from 2004 to 2009 are as follows:

Year	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*
Estimates (HK$ million)	900	667	776	1,136	1,077	1,566

Since there was no dedicated survey conducted by the HKTB in 2010 and 2011 to gauge the impact of the IVS, estimates on incremental tourist spending contributed to the restaurants sector under the IVS after 2009 are not available.

(e) The Government does not maintain a record of the requested information.

(f) The C&SD conducts the Annual Earnings and Hours Survey (AEHS) to provide comprehensive data on the employment situation of employees in Hong Kong. The statistics are also used for analysis related to the SMW. According to the results of the 2011 AEHS, there were 206 100 employees in the restaurants industry in May to June 2011, up by 1 000 when compared with the figures in April to June 2010. A breakdown by different types of restaurants is set out as follows:

Type of restaurants	*April to June 2010*	*May to June 2011*
Hong Kong style tea cafes	21 100	21 300
Chinese restaurants	67 200	67 400
Restaurants, other than Chinese	66 500	66 500
Fast food cafes (including takeaway shops)	50 400	51 000
Restaurants (total)(1)	205 100	206 100

Note:

(1) Individual figures may not add up to total due to rounding.

In addition, the C&SD conducts the Annual Survey of Economic Activities (ASEA) for compiling statistics on the business performance and operating characteristics of various sectors (including the catering industry). Operating statistics cover compensation of employees (including wages, salaries and other employees' welfare), operating expenses and business receipts. The 2011 ASEA, which can reflect the position after the implementation of SMW, commenced in February 2012 and its results will be available by end 2012.

(g) and (h)

Based on the data collected from the ASEA conducted by the C&SD on a yearly basis, some key statistics on the business performance and operational features of specific categories of food establishments and the whole food services sector over the past five years are set out in Annexes 1 to 3.

During 2005 to 2010, although the Hong Kong economy was hit by the global financial tsunami and had once slipped into a recession, the economy quickly emerged from the mire and still posted a cumulative 21% growth in real terms over the period. Local shop rentals and food costs had risen notably over the past two years, thereby lifting the operating expenses of local food establishments.

However, with the overall economy on an up-cycle and the domestic sector held buoyant, food establishments also saw notable business growth, thereby cushioning in part the impact of higher costs on profits. As can be seen from Annexes 1 to 3, Chinese restaurants tend to have a thinner profits margin and hence are more affected by rising rentals and food costs. Fortunately, thanks to the revival in business in 2010, the gross surplus/business profit ratio of Chinese restaurants stood at 5.0%, largely on par with the average in the three years prior to the financial tsunami (2005 to 2007: 5.5%). In comparison, fast food shops saw an even faster growth in business, and thanks to stronger pricing power, they managed to attain double-digit profit ratio over the past several years.

In sum, while the profit ratio of the whole food services sector had declined somewhat in recent years, the figure in 2010 was still largely in line with the average ratio over the three years prior to the 2008 financial tsunami (2005 to 2007: 7.1%).

The ASEA for 2011 already started in February this year. The results will be released towards the end of the year.

(i) Under the Food Business Regulation (Cap. 132X), any person who intends to operate a restaurant must apply to the Director of Food and Environmental Hygiene for a restaurant licence. The applicant may apply to the FEHD by submitting a duly completed standard form together with three copies of the proposed layout plans of the premises for the restaurant under application, and a declaration on compliance with Government lease conditions. The FEHD will refer the application to the relevant departments for comments so as to ensure that the application meets all the criteria, including those in respect of building safety, fire safety, statutory plan restrictions and health. If the relevant departments have no objection, the FEHD will hold an Application Vetting Panel meeting jointly with the relevant departments and the applicant and issue a Letter of Requirements to the applicant within 20 working days of acceptance of the application. The FEHD will issue a full licence within seven

working days upon confirmation of the applicant's compliance with all the licensing requirements.

As a business facilitation measure, an applicant for full licence may at the same time apply for a provisional licence so that he can operate the restaurant on a provisional basis. If the applicant can submit the relevant certificates signed by professionals certifying that the premises under application have met the essential health, ventilation, building and fire safety requirements imposed by the departments concerned for the issue of provisional licences, the FEHD will issue a provisional licence with a six-month validity within one working day.

In 2011, the average time required for the FEHD to issue a full and a provisional restaurant licence were 167 and 57 working days respectively. The present procedures and time taken for processing applications by the FEHD for restaurant licences have already struck a balance between the need for effective control and business facilitation. The FEHD has no plan to make changes for the time being. Nevertheless, the FEHD reviews the relevant procedures from time to time to cater for the operations and needs of the trade.

(j) and (k)

The Government is committed to enhancing the business environment of Hong Kong and reducing business compliance costs through conducting regulatory reviews and implementing the "Be the Smart Regulator" Programme. In the past five years, the Government worked closely with the food business sector to explore ways to remove unnecessary procedural and regulatory barriers, modernize the food business requirements and improve business licensing services for the catering industry through channels such as the Business Facilitation Advisory Committee, its former Food Business Task Force and the Business Liaison Groups for restaurant food business and non-restaurant food business. Various business facilitation measures such as relaxation of the food room requirement for licensed restaurants and factory canteens,

streamlining the licensing procedures for liquor licence and application for outside seating accommodation, updating the fire safety requirements of food premises to make them clearer and more business-friendly, and so on, have been implemented by the Government to reduce the compliance costs and enhance the business opportunities and operational flexibility of the catering industry.

In addition, the Government has all along been providing assistance to small and medium-sized enterprises (SMEs) of various industries with a view to enhancing their competitiveness. These include the catering industry which comprises a large number of SMEs. For example on financing, the SME Loan Guarantee Scheme administered by the Trade and Industry Department (TID) provides up to 50% loan guarantee for approved loans taken out by SMEs and the maximum amount of loan guarantee for each SME is $6 million. The SME Financing Guarantee Scheme (SFGS) administered by the Hong Kong Mortgage Corporation Limited (HKMC) also provide guarantee coverage on 50% to 70% of the facility amount to eligible enterprises. Each enterprise or each group of enterprises can borrow not more than HK$12 million under the Scheme, which guarantees both term loan and revolving credit facility.

In response to the impact brought to the business of Japanese restaurants due to the public's concerns about the safety of Japanese food following the earthquake in Japan in March 2011, the HKMC, in consultation with the Government, implemented a special arrangement on guarantee fee waiver under the SFGS from 1 June 2011 to 31 December 2011 to help local enterprises which are adversely affected by the earthquake, including Japanese restaurants, to tide over the difficult period and provide timely relief.

To support SMEs to tide over the uncertain global economic environment and the possible financing difficulties as a result of credit crunch, HKMC has, with the support of the Government, introduced the time-limited Special Concessionary Measures under SFGS on 31 May 2012 to provide 80% guarantee protection to

eligible loan facilities. The application period is nine months and the Government provides a total guarantee commitment of HK$100 billion.

Moreover, the Support and Consultation Centre for SMEs (SUCCESS) run by the TID provides SMEs from various sectors (including catering) with free, reliable and practical information and consultation services. SUCCESS also organizes seminars and workshops to help broaden SMEs' business knowledge and enhance their entrepreneurial skills.

The Government will, as always, remain vigilant on the changes in the market and review the various support measures for SMEs from time to time so as to meet their needs.

Annex 1

Chinese Restaurants

(HK$ million)

Year	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*
Sales and other receipts	30,024 (100.0)	32,521 (100.0)	42,247 (100.0)	45,255 (100.0)	44,870 (100.0)	47,546 (100.0)
Total operating expenses*	28,735 (95.7)	30,671 (94.3)	39,539 (93.6)	41,544 (91.8)	42,148 (93.9)	45,181 (95.0)
Of which:						
Total value of purchases of goods for sale^	11,190 (37.3)	11,174 (34.4)	14,679 (34.7)	15,172 (33.5)	15,812 (35.2)	17,040 (35.8)
Rental cost	3,282 (10.9)	4,544 (14.0)	4,988 (11.8)	5,162 (11.4)	5,533 (12.3)	5,868 (12.3)
Gross surplus	1,289 (4.3)	1,850 (5.7)	2,709 (6.4)	3,711 (8.2)	2,722 (6.1)	2,365 (5.0)

Notes:

* Including Compensation of Employees.

^ Around 90% is attributable to food cost.

( ) Percentage share in sales and other receipts.

Annex 2

Fast food shops

(HK$ million)

Year	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*
Sales and other receipts	11,602 (100.0)	12,726 (100.0)	16,099 (100.0)	16,783 (100.0)	17,271 (100.0)	18,720 (100.0)
Total operating expenses*	10,688 (92.1)	11,628 (91.4)	14,281 (88.7)	15,142 (90.2)	15,513 (89.8)	16,259 (86.9)
Of which:						
Total value of purchases of goods for sale^	3,451 (29.7)	3,752 (29.5)	5,075 (31.5)	5,604 (33.4)	5,566 (32.2)	5,837 (31.2)
Rental cost	1,773 (15.3)	1,861 (14.6)	2,426 (15.1)	2,246 (13.4)	2,325 (13.5)	2,546 (13.6)
Gross surplus	914 (7.9)	1,098 (8.6)	1,818 (11.3)	1,641 (9.8)	1,758 (10.2)	2,461 (13.1)

Notes:

* Including Compensation of Employees.

^ Around 90% is attributable to food cost.

( ) Percentage share in sales and other receipts.

Annex 3

Overall food services

(HK$ million)

Year	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*
Sales and other receipts	63,948 (100.0)	71,688 (100.0)	87,754 (100.0)	93,788 (100.0)	94,814 (100.0)	101,366 (100.0)
Total operating expenses*	60,725 (95.0)	67,615 (94.3)	78,453 (89.4)	85,407 (91.1)	87,368 (92.1)	93,721 (92.5)
Of which:						
Total value of purchases of goods for sale^	22,079 (34.5)	23,210 (32.4)	30,221 (34.4)	32,306 (34.4)	32,904 (34.7)	34,848 (34.4)

			(HK$ million)			
Year	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*
Rental cost	9,087	10,679	10,970	12,012	13,304	14,800
	(14.2)	(14.9)	(12.5)	(12.8)	(14.0)	(14.6)
Gross surplus	3,224	4,073	9,301	8,381	7,446	7,645
	(5.0)	(5.7)	(10.6)	(8.9)	(7.9)	(7.5)

Notes:

* Including Compensation of Employees.

^ Around 90% is attributable to food cost.

( ) Percentage share in sales and other receipts.

Charging Rates of MPF Schemes

20. **MR PAUL TSE** (in Chinese): *President, it has been reported that employees and self-employed persons in Hong Kong paid $6.35 billion a year to Mandatory Provident Fund (MPF) trustees at a charging rate as high as 1.74%, which is the highest among comparable developed countries (including Singapore, Australia, the United Kingdom and Chile). The fund manager quoted in the report even pointed out that a charging rate of 1.8% was absolutely high, and the performance of MPF in the past few years had been far from satisfactory, always resulting in losses rather than gains, and that the Government had to take actions to prevent the trustees from maximizing their profits, especially because the profits generated from this business would become increasingly substantial towards the later stage. In this connection, will the Government inform this Council:*

(a) whether the Government has looked into the reasons why MPF charges at present are the highest among the aforesaid regions; whether it has assessed if MPF charges are reasonable; whether it has assessed the implementation of MPF and considered the abolition or otherwise of the entire MPF Scheme based on the level of satisfaction towards MPF charges and the effectiveness of the entire Scheme of members of the public; if it has, of the outcome of such assessment; if not, the reasons for that and whether it will conduct an assessment as soon as possible;

(b) whether it has estimated the level to which MPF charges may be lowered under the "MPF Semi-portability" (that is, the "Employee Choice Arrangement" (ECA)) policy; and

(c) of the new policy and measures in place, besides the "MPF Semi-portability" policy, to expeditiously lower MPF charges so as to protect the contributions of members of the public?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President,

(a) The MPF System was introduced only after the community has had prolonged discussion and reached a consensus. It aims to assist the working population to accumulate retirement savings through contributions from employers and employees. Before the implementation of the MPF System in 2000, only one third of Hong Kong's working population were covered by some form of retirement protection. As at end March 2012, MPF schemes accumulated assets of over $390.7 billion for more than 2.58 million scheme members, comprising both employees and self-employed persons, for their retirement. Around 90% of the working population are currently covered by either MPF schemes or other retirement protection schemes. In addition, voluntary contribution has taken up 18.8% of the total MPF contributions in the first quarter of 2012, representing a gradual increase from 8.6% in the second quarter of 2003. This signifies the working population have taken a more proactive approach to save for retirement through MPF schemes. From December 2000 to March 2012, the annualized internal rate of return, after deductions of fees, is 3.6% which is higher than the annualized Composite Consumer Price Index change.

As a retirement protection scheme, the MPF System in Hong Kong is at its initial stage of development and needs continuous improvement. The Government and the Mandatory Provident Fund Schemes Authority (MPFA) have conducted various studies and introduced enhancement measures as part of the ongoing efforts to

improve the MPF System. They mainly seek to increase market competition and transparency; to lower the operating costs of MPF schemes as much as practicable without compromising the protection for scheme members; and to improve the arrangements for withdrawing MPF accrued benefits. These measures have achieved some results.

There has been a notable reduction in the fees of MPF schemes and the Fund Expense Ratio (FER) of MPF funds. On the whole, the average FER of MPF funds has decreased from 2.1% as of January 2008 to 1.74% in 2012, representing a reduction of more than 17%. We will continue with our efforts on this front.

We believe that, with the MPF System becoming increasingly mature and with its growing scale, there should be room for further reduction in MPF fees. In this connection, we note that the industry has recently issued a consultancy study report which made comparisons among our MPF System and four similar overseas systems that have been operating for some 20 to 40 years. Based on overseas experience, with the enhancement of the system and the year-on-year increase of asset size, there should be scope for fee reduction.

(b) If the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011 for regulating MPF intermediaries is enacted within this Legislative Session, the ECA which benefits MPF scheme members will come into operation from 1 November 2012. It is estimated that the size of transferable MPF assets will be substantially increased from 41% of the total to 67% of the total, thereby promoting market competition and prompting trustees to actively consider fee reduction. The Government and the MPFA noticed that some trustees had indicated in public that the implementation of ECA would increase the pressure for fee reduction and they had already introduced new MPF schemes at lower fees. In the past few years, all trustees have reduced their fees and charges, with over half of them reducing their fees for more than once.

(c) As mentioned above, the Government and the MPFA have been seeking to drive down MPF fees through market forces, through various measures to increase market transparency and promote market competition, and so on. Apart from introducing ECA, the MPFA launched the "Fee Comparative Platform" on its website in 2007, providing important information on the fees and charges of all MPF funds for scheme members' reference.

In addition, we are actively rolling out other initiatives. The Government has informed the Legislative Council of the intention to move a resolution to amend the Mandatory Provident Fund Schemes (General) Regulation for the introduction of an automatic levy adjustment mechanism for the MPF Schemes Compensation Fund. If the relevant amendment is passed within this Legislative Session, the Compensation Fund should be able to suspend the collection of Fund levy at 0.03% per annum starting from the third quarter of this year. This will be fully reflected in the FER, thereby allowing more contributions of scheme members to be put to enhance their retirement protection. Meanwhile, the MPFA has commissioned a consultancy study on the administrative costs of MPF trustees. The study involves analysis of the operation procedures, cost items and cost levels of trustees with a view to further streamlining the relevant procedures, thereby offering more room for fee reductions. The MPFA expects the consultant to submit a preliminary report in the middle of this year, and plans to put forward recommendations to the Government based on the results of the consultancy study.

BILLS

Second Reading of Bills

(Bill originally scheduled to be dealt with at the last Council meeting)

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): Bills. This Council will now continue with the Second Reading debate on the Competition Bill.

COMPETITION BILL

Resumption of debate on Second Reading which was moved on 14 July 2010

DEPUTY PRESIDENT (in Cantonese): I will first call upon Mr Andrew LEUNG to address this Council on the Report of the Bills Committee.

MR ANDREW LEUNG (in Cantonese): Deputy President, first of all, I wish to tender my apologies to you and Honourable colleagues. This is because last Friday I had to attend activities commemorating the 30th anniversary of the Vocational Training Council while the Bill on the replacement mechanism was read the Third time and passed in a swift and dramatic manner, I was unable to come back to speak on the resumed Second Reading debate on the Competition Bill.

In my capacity as chairman of the Bills Committee, I now report on the deliberations of the Bills Committee.

The Bills Committee has noted that 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. Due to the lack of statutory power in conducting effective investigations into public concerns about suspected cases of anti-competitive conduct in Hong Kong, it is not possible to impose appropriate sanctions for such conduct.

The Bills seeks to prohibit "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).

Put simply, the first conduct rule seeks to prohibit 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 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 prohibits mergers that have the effect of substantially lessening competition in Hong Kong.

The Bill provides for the establishment of the Competition Commission (the Commission) and the Competition Tribunal (the Tribunal). The Commission is tasked with the functions to receive and investigate competition-related complaints, and to bring public enforcement action before the Tribunal in respect of anti-competitive conduct. The Tribunal is to hear and adjudicate on competition cases, private actions as well as reviews of determination of the Commission.

The Bills Committee has held a total of 38 meetings and met with representatives of various organizations and individuals in many rounds of meetings.

The Bills Committee has expressed general support for the introduction of a cross-sector competition law so that the authorities can investigate anti-competitive cases more effectively.

In the course of deliberating on the Bill, some Members have suggested that the Administration should make safeguarding consumer benefit an object of the Bill or a new function of the Commission. Although the suggestion is not accepted by the Administration, it has agreed to amend Schedule 1 to the Bill after considering Members' views by adding "while allowing consumers a fair share of the resulting benefit" in the criteria for exempting agreements enhancing overall economic efficiency in the first conduct rule.

In the course of the deliberation, some Members have expressed concern that the general prohibition against anti-competitive conduct is unclear and small and medium enterprises (SMEs) may be caught by the law inadvertently.

Members noted that anti-competitive activities should be distinguished between more serious and less severe activities, or the so-called hardcore and non-hardcore anti-competitive activities. The indiscriminate treatment of these two kinds of anti-competitive activities in the Bill and the lack of clear definitions for both of them would be a huge burden for SMEs as they may incur heavy costs when they seek legal advice on compliance matters and they may be liable to heavy penalties on account of some inadvertent breach of a less serious nature.

In response to Members' request, the Administration has 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 recognized in overseas jurisdictions as hardcore anti-competitive activities. When dealing with these activities, the Commission may exercise its discretion to accept commitments, issue infringement notices or institute proceedings in the Tribunal.

For non-hardcore anti-competitive activities, the Administration has proposed that a new instrument of warning notice should be introduced. Under the new "warning notice" mechanism, the Commission is required to warn the infringing parties before instituting any legal proceedings. Members have noted that the proposed warning notice seeks to address concerns of the business sector, particularly SMEs, over the risk of falling foul of the law unknowingly.

Some Members have suggested a complete exemption for SMEs from the Bill, arguing that because of their small size, SMEs have limited influence on the market.

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 consumers and should be prohibited by law.

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 can be exempted from regulation.

Members have asked the Administration to set out details of the de minimis arrangements in the Bill to provide greater certainty to SMEs.

In response to Members' concerns, the Administration 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: all agreements, concerted practices and decisions between undertakings with a combined turnover not exceeding HK$100 million in the preceding financial year. Noting Members' concern, the Administration proposes to further adjust the threshold to HK$200 million.

The second conduct rule of the Bill prohibits undertakings from abusing their substantial degree of market power in a market by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition.

The Administration has proposed to set out de minimis arrangements in the Bill, using the business turnover of HK$11 million as the threshold for exclusion from the second conduct rule. The amount of HK$11 million is the average business turnover of SMEs in Hong Kong for the period between 2005 and 2009. 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.

The Bills Committee has conducted many discussions on whether it is appropriate to set the threshold for exclusion at this level. Some Members have suggested excluding "micro companies" from the calculation of the turnover threshold. In response to Members' concern, the Administration has revisited the turnover threshold. The Administration remains of the view that any adjustment to the threshold has to be justified and 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, 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 ground that 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.

Members have expressed many views on the test of "substantial degree of market power" used in the formulation of the second conduct rule. Some Members have suggested that 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 as referred to in the second conduct rule.

Taking account of best international practices, and the fact that the Administration has adopted a lower threshold of "substantial degree of market power" than the "dominance" test for the second conduct rule, the Administration has proposed adopting a market threshold of 25%. This proposal is made in response to Members' request for setting a minimum market share percentage.

Members have suggested that other factors apart from market share percentage might need to be taken into account in assessing the market power of an undertaking. Taking account of overseas experience and Members' suggestions, the Administration proposes to amend clause 21 of the Bill, by setting out the factors for determining whether an undertaking has a "substantial degree of market power". These factors include the market share percentage of the undertaking, its pricing capability and hindrance to market entry of competitors, and so on.

The Bill provides that the Commission is required to issue guidelines indicating the manner in which it expects to interpret and give effect to the conduct rules.

The Bills Committee has deliberated on the sample Guidelines on the conduct rules. Some Members have requested to make the Guidelines on the proposed conduct rules subsidiary legislation subject to scrutiny by the Legislative Council. The Administration has expressed disagreement, emphasizing the importance to allow flexibility for the Commission to issue and amend the Guidelines in order to respond swiftly to the rapid changes in the market. However, the Administration has agreed to Members' request to introduce amendments to specify that the Commission must consult the relevant panel of the Legislative Council when drawing up the Guidelines.

Mrs Regina IP has indicated that she would move an amendment to specify that after the passage of the Bill, the relevant clauses would only come into effect after the Guidelines drawn up by the Commission are endorsed by the Legislative Council.

The Bills Committee has noted that the Bill empowers the Commission to issue an infringement notice bearing a sum of payment of up to HK$10 million before bringing proceedings to the Tribunal to a person allegedly contravening or having contravened the conduct rule.

Some Members consider the sum under the infringement notice an unreasonable burden on SMEs. 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. The sum would not suffice in producing a deterrent effect on the large enterprises. Members therefore have suggested removing this power from the Bill.

In addressing SMEs' concerns, the Administration has proposed to remove the payment requirement under the infringement notice from the Bill.

Clause 91 provides that the Tribunal may impose a pecuniary penalty on an undertaking and the original proposed cap on pecuniary penalty is 10% of the global turnover for each year in which the contravention has continued.

Some Members and the business community have criticized that this penalty is disproportionately severe when compared with that in the European Union, the United Kingdom and Singapore. They are concerned that this might drive foreign investment away. The Administration agrees that a balance should be struck between maintaining a sufficient level of deterrence and keeping Hong Kong's competitive edge. The Administration therefore has accepted Members' suggestion to make reference to the Singaporean approach to set a cap of 10% of local turnover for a maximum of three years.

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

before the Tribunal for determination. Some Members are concerned that large companies could make use of the stand-alone right of private action to harass SMEs.

In order to alleviate the worries and concerns of the SMEs, and also because of the fact that the Bill also provides that persons who have suffered loss have the follow-on right of action for determined contraventions, the Administration has proposed to introduce amendments to take out the relevant provisions on stand-alone right of private action. As the business community acquires more experience with the competition regime, the Administration will review the need to introduce the stand-alone right of private action in a few years' time.

Clauses 3 to 5 provide for the exemption arrangements for statutory bodies.

The Administration has proposed that 575 statutory bodies should be exempted in their entirety. Six statutory bodies should not be exempted.

On the exemption arrangement for statutory bodies, the Bills Committee has heard the views of many deputations. Some of these deputations have opposed the broad exemption of statutory bodies on the ground that it would create an uneven playing field between the Government and the private sector. They consider that exempting the Trade Development Council (TDC) in particular is not desirable. However, Members also note that the majority of deputations have indicated support for the exemption of most statutory bodies and they think that if the TDC is to be made subject to the Bill, its performance of its role of promoting trade for Hong Kong and providing essential non-profit-making trade services to SMEs might be hampered.

The Administration has advised that the majority of statutory bodies in Hong Kong do not engage in economic activities or are 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.

The Administration has advised that the exemption of 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. The TDC would be requested to rectify any of its anti-competitive conduct in case it is found in breach of the principles of competition.

Most Members consider the proposed list of exempted bodies agreeable and they have expressed support for exempting the TDC from the Bill in recognition of its important role and contribution in promoting trade development.

Some Members do not agree with such a broad exemption of statutory bodies and they consider that it is unfair to the private sector which would be subject to the Bill. Mr Albert HO, Mr Ronny TONG and Mrs Regina IP will propose amendments respectively in their personal capacity on the exemption arrangements for statutory bodies.

In the course of deliberation, the Bills Committee has discussed the powers and composition of the Commission under the Bill, its enforcement powers, its handling of complaints and conduct of investigations, as well as those clauses on the role and duties of members of the Tribunal. Members have put forward views on these matters, and the Administration has accepted many suggestions made by Members. It will move amendments on the following matters: the upper limit on the number of Commission members, rules regarding registration and disclosure of interest, and leave requirement for appeal to the Court of Appeal, and so on.

Some Members have expressed concern whether the Tribunal should conduct its proceeding with informality as stipulated in the Bill since it will be a superior Court of record and it may impose pecuniary penalty.

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.

Clauses 107 and 108(2) respectively provide that pure competition claims must not be brought before the Court of First Instance and may only be brought before the Tribunal, while clause 108 allows composite claims, which are claims consisting of competition claims and other claims, to be brought before either the Court of First Instance or the Tribunal.

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

Members have noted that under the proposed mechanism, the Tribunal would have 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 before the Court of First Instance, the Court of First Instance would transfer to the Tribunal all competition-related parts of the claim, and would retain those connected claims only if it is in the interests of justice to do so. The Administration has advised that this proposed transfer mechanism 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.

In the course of deliberation, the Bills Committee has made many proposals on the draft wording of the Bill and the Administration has proposed amendments based on the suggestions it has accepted. The Bills Committee will lend its support to the amendments from the Administration.

Deputy President, the work on deliberating the Bill has been difficult because of the many arguments involved. The deliberations have taken a long time and the meetings are numerous. These meetings can only be held when there is a quorum. I am grateful to the six Members who have withdrawn from the Bills Committee because they have enabled a reduction of the quorum by two Members. I am grateful for the perseverance shown by the other 33 Members.

Lastly, I would like to make use of the opportunity to thank the colleagues of the Secretariat, including the Clerk, the Legal Adviser and the other staff for their hard work in helping us complete this arduous task.

Deputy President, the following is my personal view on the Competition Bill.

A competition law should not be considered as a panacea to all problems. People have their own expectations on the Competition Bill. Some would hope that with the enactment of a competition law, the "tigers" would all collapse and from then on we would not see petrol prices rise quickly while being lowered slowly, the supermarkets in Hong Kong would not be monopolized by the two giant supermarket chains, supermarkets would cease to charge a fee for displaying goods on their shelves, small shops would bloom and mushroom, we can buy inexpensive goods from now on and the Commission would tackle the giant consortia, and so on.

The fact is, however, even after a competition law has been enacted in some countries, petrol prices there still see this situation of prices going up fast and coming down slowly and oil companies changing their prices together. The giant supermarket chains there still dominate the retail market. In my opinion, the authorities have not done a good job in managing people's aspirations during the course of enacting the law and deliberating on it. The result is that many people think that a competition law is the cure-all for saving the SMEs and tackling the giant consortia and consumers will then hope to be able to buy inexpensive goods and services of good quality.

As early as in 2005, I already cited remarks made by GREENSPAN, the former chief of the Federal Reserves. He said that an anti-trust law would impede the incentive to production in the business sector because businessmen would be wary about breaking the law. In certain countries, an anti-trust law is an important part forming the trade barriers and it is used to prevent foreign enterprises from entering the market to compete with the local enterprises.

Hong Kong has always been a place full of competition. Ever since the Government has made it known that it wants to follow the footsteps of overseas

jurisdictions and enact a competition law, there has been a divergence of opinions and also discontent in the business sector. People in the sector ask, "Is a competition law really necessary?"

For many years Hong Kong has been rated by organizations like the Heritage Foundation of the United States and the Fraser Institute of Canada as the freest economy in the world. In a chart on competitiveness released by the Academy of Social Science in China, Hong Kong is placed in the topmost position. Hong Kong is considered the most competitive city among the 294 cities in the four places on both sides of the straits. On 31 May the International Institute for Management Development at Lausanne rated Hong Kong once again as the most competitive economy in the world. There are more than 900 000 enterprises in Hong Kong, of which 98% are SMEs and this is proof that competition in the market is fierce.

Hong Kong is a small economy and it relies on free trade, a liberal market and convenience in doing business. If there are too many harsh rules and laws, and when these restrictions are imposed, this may deter new international investors from entering the local market, thus leading to severe losses for Hong Kong. A competition law may lead to litigations, and a waste of time and money. To many enterprises, this may constitute a heavy burden and even drive SMEs out of existence.

For those the businessmen, a new law would imply more compliance costs for the SMEs and they have to spend more money on hiring lawyers and other professionals. In the end, these costs would be transferred onto the consumers, like the case when minimum wage was introduced a year ago. At first both the Federation of Hong Kong Industries (FHKI) and I did not agree with the legislation on minimum wage because we did not want to import wholesale the laws from other countries which aimed at protecting their local products and companies into such a small market like Hong Kong which relied on imports.

The SMEs are even more afraid of the giant consortia using the competition law to clamp down on the SMEs and the law is not used to crack down on those big companies which contravene the law. In fact, there are many examples overseas of big enterprises using the competition law to initiate

litigations. In Singapore, after the country has passed a competition law in 2004, there have been 13 such lawsuits as at last year. But the defendants in 11 of these cases are SMEs. The law-enforcement agency there has tried to investigate if the Singapore Airlines and such like airlines have engaged in any price-fixing. But the conclusion reached in the end was that the moves made were beneficial to the economy as a whole and not unlawful. So the case is that the big companies are spared while the small ones become the victims.

If enforcement in Hong Kong is effected like the case of Singapore, and if these tigers are not cracked down while the SMEs are investigated and prosecuted, it would be very difficult for these SMEs to pay the solicitors' fees. The losses in business reputation and personal reputation are even harder to remedy. Even if the case is not brought before the Court in the end, these small companies may have already closed down. Therefore, during the scrutiny of the Bill, the FHKI and many SME representatives have asked that the Bill be amended so that it will only target unscrupulous business practices like price-fixing and market monopolization and such like obvious violations of the principle of fair competition.

I am glad that Mrs Rita LAU, the former Secretary for Commerce and Economic Development, could engage in an open dialogue with the business sector and take our views on board. Though in the end Mrs LAU left the Government because of health reasons, her successor Secretary Gregory SO and the other officials responsible have responded to the views expressed by the business sector. They have proposed amendments in relation to matters of concern from the sector, in particular the SMEs, regarding private actions, the functions of the Commission and exemption of statutory bodies, and so on.

Deputy President, with respect to the expression "substantial degree of market power", we have spent much time arguing over it. At first it was the hope of the Bills Committee that the expression "dominant position" would be adopted. This is because many of the clauses in the Bill have made reference to foreign laws and when talking about the market share, many overseas jurisdictions would use the expression "dominant position".

As regards this expression, the European Union draws a line at a market share of 50% or above while in Singapore, the line is drawn at more than 60%.

Since the Courts in Hong Kong are likely to refer to precedents in other countries, if there is consistency in the use of this kind of legal expressions, the enterprises would have a greater degree of certainty when they are involved in lawsuits and the Courts may be able to cite more relevant precedents.

However, despite an extended argument with the Administration, it still insisted that the expression should not be changed to "dominant position" and that the expression "substantial degree of market power" should be used. The Administration pointed out that consideration had been given to factors like market share, difficulty in market entry, bargaining power of buyers and availability of substitutes, and so on. Members in the Bills Committee were confused and when their mind was muddled, they were scared. Then after much effort of lobbying and explaining the practical business situation, the officials finally agreed to accept the suggestion made by Members from the business sector of setting down a quantifiable standard which is reasonable and objective, that is, prescribing a percentage. In this way, the companies would feel assured and certain.

The Administration has proposed that the minimum market share percentage be set at 25%. Despite our view that a market share of 25% cannot be considered as any substantial degree of market power at all, it would make many SMEs rest assured. Having said all these, we should note that Hong Kong is a very small market and a market share of 25% is still a long way from the line drawn in places like Europe, North America and Singapore. Many Members still have a different opinion about this percentage. They think that this percentage of 25% is 5% less than the percentage of 30% as suggested by the consumers. They are worried that multinational enterprises would give up the idea of setting up their headquarters in Hong Kong because the local market is too small and the good chance of them falling foul of the line in law. They would then head for Singapore which has set the percentage at 60%. So it is only with reluctance that the business sector has accepted this percentage of 25%. The Secretary will explain in his concluding speech at the resumed Second Reading debate why this minimum market share percentage is adopted.

Deputy President, the role played by the Commission would be instrumental when it comes to enforcement in future. When I spoke earlier on

behalf of the Bills Committee, I mentioned that the Commission has many kinds of powers, from formulating and interpreting the relevant Guidelines, investigating complaints and initiating prosecution. All these will be done by the Commission. Although in the end the cases will be heard by the newly set up Tribunal and handled in a judicial manner, the sector has worries about the powers of the Commission which may be excessive.

The Administration has made many pledges during the deliberations on the Bill. These include, for example, there must be reasonable doubt before the Commission exercises its powers that suspected anti-competitive conduct has already, is in the process of, or about to take place. In addition, the Administration has also pledged that the Chief Executive would appoint people with expertise or experience in industry, commerce, law, economics, the SMEs or public policy as members of the Commission. We hope that the Commission would enforce the law in a professional manner and that it would not suffer from an inflated ego. Before the Guidelines are formulated, there must be sufficient consultation and an open mind must be adopted to listen to and accept views put forward by stakeholders, in particular the SMEs. This would serve to make the law practicable.

The officials have stressed repeatedly that some of the key tasks to be done by the Commission would be on publicity and education. The SMEs would be quite at a loss when they face the new law, not knowing if what they have been doing would breach the law. For example, would it be unlawful if people talk about what is happening within the trade and also prices when they eat in a Chinese restaurant? In the meetings of the trade associations in the past, business operators would often talk about the market information and the trade associations would even organize bulk purchases for small operators and also bargain prices with the suppliers. Would these activities be regarded as anti-competitive conduct? For some trade associations, in a bid to protect their members from cut-throat competition, they would set up minimum prices for each month. Would actions like these or when the Hospital Authority sets reference prices for taking out medical insurance be regarded as violations of the law? The companies and professional bodies do not quite understand all these matters and so before enforcement action is taken, all these questions and doubts from the sector must be dispelled and solved.

In an attempt to enhance flexibility in enforcement, the Administration has not laid down any definition for many terms and expressions used in the Bill, examples of these are "market" and "market power". When Members asked the Administration how these words and expressions would be defined, the reply given was only that the responsibility of defining them would fall on the Commission. The definition of a word like "market" will have an effect on the sector as to what constitutes a violation. Papers from the Administration point out that the word "market" may refer to a certain geographical location and it can also include the meaning of substitutes. In the meetings of the Bills Committee, we have raised questions concerning many examples such as lemon tea, milk tea, egg tarts, milk powders and even reeds. But the officials have only repeated the reply that all these would have to depend on the qualities particular to the product in question. As to the question of the availability or otherwise of substitutes, this would have to be studied by the regulatory authority concerned. And the formulas provided by the Government can only be worked out and understood by professionals or economists.

Deputy President, I believe you will also agree that Hong Kong is indeed a very small market on account of its small area of some 1 000 sq km and a population of 7 million. However, the term "market" in the eyes of the officials is an economic model of great complexities. I hope that when the Commission defines the term "market" in future, it would regard Hong Kong as a single market and this would be more comprehensible to the general public. The Commission should not give a different definition to the term "market" for each and every kind of product.

Deputy President, I so submit.

DR MARGARET NG (in Cantonese): Deputy President, I rise to speak in support of the resumed Second Reading of the Competition Bill (the Bill). The Civic Party always believes that there will be progress only when there is true competition. This is why we have always supported the enactment of a competition law. We hold that a competition law and true competition will be conducive to the development of the economy and hence enable each and every citizen to have the opportunity to enjoy the fruits of economic development.

Deputy President, I am greatly shocked by the speech of Mrs Regina IP last week. She expressed reservations about the objects and effectiveness of the Bill and took exception to them. This is not important, for she has the right to do so. However, she then proceeded to attack Members supportive of this Bill, such as Mr Ronny TONG, alleging that these Members have a selfish motive in supporting the Bill because the competition law is a means to acquire wealth as some Queen's Counsels specializing in lawsuits in this respect can make an income of millions of pounds sterling annually. Such personal attacks are indeed distasteful, particularly as Mrs Regina IP had been a senior official for such a long time and is now a Member of this Council, not to mention she has even shown an interest in running in the Chief Executive Election in future. Why does she have to resort to personal attacks?

If the competition law is primarily not in the least helpful to consumers and is unable to move any least bit of the dominance of major consortiums but will only do harm to SMEs, and if the competition law is totally useless other than helping lawyers make a fortune, it would be imaginable that the staunchest supporters of the Bill must be Law Society or the Bar Association. But this is not the case in reality. From the beginning till the end, the Consumer Council (CC) has been the strongest supporter of the Bill. The CC has repeatedly expressed its detailed and well-justified views to the Bills Committee. Deputy President, the CC obviously knows very well that the Bill does not serve to protect consumer interests; nor is it introduced for the purpose of deregulation. Rather, it seeks to impose regulation on anti-competitive conduct. But the CC has pointed out clearly that the regulation of anti-competitive conduct is conducive to protecting the rights of consumer.

Deputy President, let me read out the views expressed by the CC in its submission to the Bills Committee on 30 November 2010. First of all, the CC has conducted a series of studies on competition in a number of markets worldwide, covering industries such as auto-fuel, supermarkets, and so on. In 1996, the CC already published the Report on Competition Policy: The Key to Hong Kong's Future Economic Success. Deputy President, the Report pointed out that "…… a comprehensive competition policy and a body of law can help remove private sector barriers to market entry and ensure free competition which is not distorted by price fixing, market sharing or other anti-competitive practices, so that the operating costs of businesses can be kept at a competitive level in

Hong Kong. Over 100 economies have in place competition law with provisions against price-fixing and abuse of market dominance. The Consumer Council advocates a competition policy which prohibits anti-competitive behaviour and facilitates competition and enhances industry-wide competitiveness. As seen with sectors such as telecommunications and banking, competition can lead to lower prices, product innovation, more choices and improved services, definitely benefiting consumers.". These are the views expressed by the CC on 30 November 2010.

On 20 July 2011, the CC submitted its further views on the first conduct rule. In the second paragraph of its submission, the CC stated that enterprises will keep prices at reasonable or even low levels due to the pressure of competition. The pressure of competition can drive enterprises to launch onto the market a greater variety of goods, more creative services and products, as well as better after-sale service, hence benefiting consumers with different preferences and needs. The sixth paragraph can perhaps respond to the question of whether Hong Kong is a very free market or whether it ranks the first in the world. In this paragraph the CC expressed the view that although Hong Kong is a free market where the Government adopts an open market policy, if abuse of market power is unregulated, enterprises with market power can erect man-made barriers to market entry and drive out competition directly or indirectly through exclusionary behaviour or predatory behaviour, thus denying consumers choices and forcing them to accept expensive prices.

Deputy President, many organizations in the commercial sector have told us that in Hong Kong, it seems on the surface that the Government has not imposed many restrictions but in reality, it is very difficult for outsiders to enter the Hong Kong market. Therefore, the competition law has an objective value for existence. These results are obtained from practical studies and analyses, and their justifications are convincing. Could the CC also have a selfish motive in throwing weight behind the Bill?

Deputy President, all Members, whether they are lawyers or not, must scrutinize Bills with a stringent and responsible attitude. Any legislation passed in this Council must be fair, impartial, unequivocal and beneficial to public interest. Debates should be founded on these principles. A Bill that does not meet these requirements should not be passed, and a Bill can be passed only when

it meets these requirements. We are not here to discuss who will gain benefits in order to insult the integrity of Members and divert attention.

Deputy President, in fact, it is absolutely not surprising for anyone to have reservations about this Bill. A few years ago whenever I visited a law firm, friends in the legal profession would ask me whether a competition law would be enacted in Hong Kong and if so, when it would be enacted and what it would be like. The reason is that there is a competition law in many places and if lawyers in Hong Kong are strangers to competition law and know nothing about its workings — the legal service market in Hong Kong is transnational and many international affairs are involved — we will be put at a great disadvantage if we know nothing about competition law.

Moreover, if a competition law would be enacted, they very much wished to know when it would be enacted or what kind of a competition law would be enacted according to the Government's plan, because competition law is really different from the general legislation in that a lot of preparations will need to be made beforehand in order to obtain a full picture of it. For instance, lawyers are more conversant with criminal or civil settings and the meanings of "committing an offence" or "torts". However, special terms are used in the competition law, such as "conduct rules"; or it does not use such terms as company or corporation, but uses "undertaking" instead; it does not talk about the act itself, but it talks about the "object" or "effect"; and it talks about "concerted practices", "restriction", "market share" or "market power, and so on. Deputy President, not only are these terms in Chinese unfamiliar to us, we are not even accustomed to the use of these English terms in law.

Given that the legal provisions do not provide an exact definition and we have to rely on certain guidelines, not even lawyers are conversant with the way to handle this. As regards the drawing up of the enforcement procedures, the structure and the *modus operandi*, and even the establishment of the Competition Commission and the Competition Tribunal, all these are new sayings and concepts. Deputy President, there is bound to be resistance. For instance, Law Society has put forward detailed views to the Bills Committee and provided a lot of input on the terms just mentioned by me, in the hope that the definitions can be given greater clarity. But as the competition law itself involves some economic concepts, its concepts are, therefore, different from those in common law.

Deputy President, in view of this, what I have done for my constituents in the legal profession is the organization of as many seminars as possible to provide explanations. Secretary Gregory SO has also explained to my constituents and given an account to the legal profession on how the legislation is going to operate.

Deputy President, we all have gone through the process of learning, and we know that when it comes to changing our habits or transforming social customs and traditions, so to speak, it is difficult to achieve it in a short time. But the question is whether or not the authorities have really used the best methods to promote these concepts, so that everyone is well-versed in the provisions. In this regard, Deputy President, I would say that to a certain extent, I share the hidden worries mentioned by Mr Andrew LEUNG earlier on, and I very much agree to his points. Judging from the experience of my contacts with organizations and my constituents in the legal profession, we consider that in respect of expectation management, promotion, and explanation, the Government has not done very well and as a result, there are a lot of things in the Bill that many people still do not understand. Of course, I understand that for the reason of interests, some people who actually understand the legislation will say that they do not understand it. Having said that, there are people who feel worried because they genuinely do not understand it. There are indeed these people. So, the Government has really failed to do its part properly, and if this Bill is enacted, I hope the Government will carry out work to make up for this inadequacy.

Deputy President, I may not know very well whether certain economic behaviour involves competition, but upon the passage of the Race Discrimination Ordinance back then, many people also expressed grave concern because they thought that with the enactment of this Ordinance, the boss of a local bistro café may breach the law by not providing a menu in six languages. There was such a concern and an explanation was required. But in the process, the Government also failed to do a good job, resulting in many voices in society opposing the legislation on the elimination of race discrimination. How could it be possible that members of the community would oppose the elimination of race discrimination? That was really weird. Likewise, in the case of this piece of legislation which seeks to enhance competition, why is there opposition from

members of the community? I hope the Government can really realize that it has failed to do a good job.

Deputy President, as Mr Ronny TONG said last week, this Bill is indeed far from perfect in many aspects. We hope that even if the Bill is enacted, efforts will be made to carry out reviews and follow-up work. In this Bill, I have the strongest view against the exemption for statutory bodies. Deputy President, it is mostly because all are equal before the law. The Government wishes to promote fair competition, but the first thing that it has done is to grant exemption to a group of statutory bodies, thus making it unnecessary for them to comply with this law. This is most unhealthy because, a statutory body, by its definition, has a wide coverage, and let me read this out: A statutory body "means a body of persons, corporate or uncorporate, established or constituted by or under an Ordinance or appointed under an Ordinance, but does not include a company". It has a very wide coverage. I will go into greater details on this point in the Committee stage later on. The Government's definition is very broad, but it has still proposed a full exemption for all statutory bodies, while adding that where certain conditions are met, the Chief Executive in Council can incorporate some companies into the scope of regulation. Deputy President, this approach is undesirable indeed, and it will give rise to extensive opposition to the legislation upon its introduction. The CC is precisely against this proposal, and Law Society and the Bar Association are also most opposed to this provision. For this reason, I will support the amendments proposed by Members.

Deputy President, I so submit.

MR WONG KWOK-HING (in Cantonese): Deputy President, I rise to speak in support of the Competition Bill (the Bill). Regarding the examination of this Bill in this Council today, I think it is better late than never because without legislative protection and regulation in this area, the interests of consumers at large will be seriously undermined. Despite the imperfections and inadequacies of this Bill, I share the view of the Consumer Council (CC) that the law should be passed first for enforcement and then a review should be conducted expeditiously to, through actual practice, examine what areas require further amendments and supplements.

Deputy President, we have frequently received complaints about supermarkets, fuel suppliers, textbooks, building repairs, elevator maintenance, and so on, which are actually closely related to whether or not laws have been put in place to ensure fair competition and protect consumers. We have also found that shopping in supermarket is inextricably linked with the daily lives of the public at large. Sometime ago, we received many complaints about supermarkets taking advantage of its market scale to exploit consumers. These complaints often involve several aspects, one of which being collusive pricing or price. We can see that the day on which supermarkets claim to offer special prices are actually the day when prices are raised. Why? According to the supermarkets, the prices of goods will be especially low on Fridays, Saturdays and Sundays. But from our findings, we found that prices on these few days are even higher than those from Mondays to Thursdays. This tactic adopted by supermarkets has become a sales practice to mislead consumers. With the establishment of the Competition Commission (the Commission) for handling complaints in the future, investigations can then be conducted into such problems.

Furthermore, we can see that supermarkets are frequently misleading consumers. For instance, they claim their goods to be the cheapest in Hong Kong, "beyond bottom prices" or " "rewarding you every day". But, is this really the case? Furthermore, they will very often use several different weighing and measuring scales to mislead consumers, revising the use-by dates, altering goods or food quality, passing off inferior goods as superior goods, and so on. I think the Competition Ordinance, once came into operation, may help consumers who see their interests jeopardized in the aforesaid circumstances.

The greatest cause of criticism is that supermarkets have actually taken control of the market and very often suppliers in the supply of goods by charging them slotting allowances or advertising surcharges or stipulating "default periods" arbitrarily, thereby making it impossible for suppliers to supply goods on the market in an extensive and comprehensive fashion. As a result, supermarkets are indirectly controlling the market, thereby leading to an imbalance in market distribution, for consumers can buy a certain type of specially supplied goods only at certain supermarket chains and it is difficult for them to buy such goods elsewhere. This situation is currently becoming increasingly rampant.

Furthermore, some supermarkets take advantage of their enormous sales scale and enter into agreements not known to members of the public with suppliers, thereby restricting certain commodities to be sold as special brands supplied by a certain supermarket chain only. The consumers' right to choose will thus be indirectly compromised by this counter-measure against suppliers.

In addition to the string of examples cited by me just now, I have also received a lot of related complaints in the past several years from the public, but they had nowhere to seek redress. When they complained to the Consumer Council, they were told that it had no investigation power. Neither was there any legislation empowering it to protect consumers' interests. Hence, we welcome the tabling of the Bill to the Legislative Council today. The Commission, once established in the future, will be vested with the power of investigation and capable of receiving complaints from members of the public and exercising its investigation power to conduct thorough inquiries into relevant complaints. Meanwhile, the Commission can also refer some substantiated complaints to Magistracies for proceedings. Hence, we think that the law is progressive and capable of protecting the rights and interests of consumers, thereby promoting a more level playing field in the Hong Kong market.

After the passage of the Bill, I think the Government may consider several issues. Firstly, the Government should consider including consumer representatives and also representatives from unions or the labour sector in order to reflect the aspirations and concerns of the grassroots. Secondly, we can see that the law has a one-year transitional period and, during this period, the question of how the Government will enhance publicity and education as well as raising consumers' awareness of self-protection is quite important, too. Furthermore, I think that the review, set to be conducted three to five years later, is too late.

Actually, after this law has taken effect, can the Government consider conducting an interim review around one and a half year later? This is because doing so can sum up and identify problems in a timely manner for further perfection and supplement. I think it is too long for the review to be conducted three or five years later, and it also takes considerable time for a review and amendment to be carried out. This might add up to six or seven years. This period is indeed very long and not at all appropriate.

Lastly, Deputy President, I wish to say that we certainly understand that the Competition Bill, even if passed, is definitely no panacea for all diseases. Actually, neither can we rely solely on the Bill to protect the rights and interests of consumers. Hence, the Government should draw up other more comprehensive complementary measures and policies for the protection of such rights and interests.

For instance, the Trade Description Ordinance (TDO) being scrutinized by this Council is a very important piece of legislation. As I cited just now, many trade practices adopted by supermarkets to mislead consumers and various not at all clear and transparent practices cannot be dealt with under the Competition Ordinance. Instead, they can only be dealt with by the revised TDO on another front or from another angle for the protection of the rights and interests of consumers. This is one example.

Second, I think policies should be drawn up to proactively assist the operation of small and medium business operators. The Government should enable these operators to have their own room of operation to prevent the Hong Kong market from moving towards monopoly and oligopoly. In particular, the Government's policy towards traders should be perfected, and hawkers must not been abolished and wiped out.

In addition, during the development of new towns, the Government should build municipal markets to allow small and medium business operators to have their own room for operation and a place for starting up businesses. For instance, although Tin Shui Wai is populated by hundreds of thousands of people, the Government is reluctant to build municipal markets there. All the shopping arcades there are controlled by either The Link REIT or other major operators or monopoly holders. In the whole Tin Shui Wai, people have no choices other than Park'n Shop and Wellcome.

Hence, even if the Competition Ordinance takes effect, what purpose can this piece of legislation alone serve? If even the amendments to the TDO are endorsed, so that both these two Ordinances can take effect, can this help consumers? Actually, we can still not offer them assistance because no small shop tenants can be found in Tin Shui Wai despite its enormous size and a population of hundreds of thousands of people. Such being the case, what

purpose can the Competition Ordinance and the TDO serve? The residents in Tin Shui Wai are compelled to patronize the supermarkets there without any alternative.

In my opinion, the Government should gain the experience and learn the lessons from such weird or erroneous town planning. In its development of other new towns, the Government must avoid such planning blunders. Given the current situation in Tin Shui Wai, the Government should also change its policy to help the grassroots.

The three points raised by me just now precisely demonstrate that we should absolutely not think that consumers can enjoy absolute protection after the Competition Ordinance is put in place. The Government should examine this issue in a holistic manner because only in this way can Hong Kong society enjoy a more balanced economic development *(The buzzer sounded) ……* so that we can compete at a fairer level ……

DEPUTY PRESIDENT (in Cantonese): Speaking time is up.

MR WONG KWOK-HING (in Cantonese): Thank you, Deputy President.

MR FRED LI (in Cantonese): Deputy President, on 27 February 1993 (Wednesday) — more than 19 years ago — at the meeting of the former Legislative Council, I moved a motion on behalf of the Meeting Point and it reads like this, "That this Council urges the Government to formulate a fair trade policy promptly and to introduce legislation to establish a fair trading commission for the implementation of the policy, so as to rectify any phenomenon of unreasonable market dominance, safeguard fair competition and protect the consumers' interests.". That was the motion moved by me 19 years ago and I believe it was also the first motion relating to fair competition in the Legislative Council. We have lobbied for the proposals found in this motion 19 years ago for so many years — the overall political environment has gone through many changes down these many years and we also started out as the Meeting Point, turned into the United Democrats of Hong Kong, and had a merger to become the

Democratic Party — and finally, this Bill will be passed in this new Chamber today.

(THE PRESIDENT resumed the Chair)

I am all for the passage of this piece of legislation on competition, even though many friends in the business sector said that this piece of legislation on competition — as did the Chairman of the Bills Committee, Mr Andrew LEUNG, just now — is stringent and harsh and will enable consortia to bully SMEs. Here, I wish to point out clearly that if the existing legislation on competition for Hong Kong is not amended in any way — in fact, the Government has already made several amendments, plucked some of the teeth and loosened some — even the Bill in its original form was far less severe than the relevant laws in other countries, that is, it was already weaker. In other countries, competition laws are criminal laws and any violation of fair competition is liable to imprisonment. Many countries have specified violation of fair competition as a criminal offence and the penalties are even harsher and costlier than those in our present competition law. Our competition law is definitely not a criminal law, but a civil law. Even private action has been struck out because the Administration has to make concessions, so I wonder what cause for alarm there is for SMEs.

Last week, after listening to the comments made by Mrs Regina IP, I was so shocked that I nearly fell off my chair. It had never occurred to me that a Legislative Council Member could go so far as to say such things. What did she say? She cited the example of a tendering process for a market in Tai Po, saying that at that time, a group of stall owners were involved in bid rigging — it was subsequently proven that they were indeed involved in bid rigging — she said that was not a problem and believed that after these SMEs had engaged in bid rigging, the goods sold to consumers would be cheaper. Is that not over the top? These eight SMEs teamed up to bid for eight stalls and through co-ordination, they could gain benefits in terms of the rent, but would this guarantee that cheap goods would surely be sold to consumers? This was never mentioned, nor is there any guarantee. If I were the ninth or tenth person who wants to bid for those stalls, what could I do? The prices of my goods could actually have been

even lower but since they had won the bid for those stalls through bid rigging, who have actually become the victims? The Government would receive less rent because they engaged in bid rigging and shared the pie among themselves. An Honourable colleague could go so far as to say that this is all right, believing that this can also be considered fair competition. I believe we cannot condone anti-competitive activities simply because SMEs are involved. The Democratic Party cannot support and accept such conduct.

Many associations for SMEs have approached the Democratic Party and lobbied us, saying that reaching an agreement on price increases is not at all a problem and that they are used to this. However, the competition law does not permit doing so and I support this. The issue at stake has nothing to do with whether a company is big, medium or small. The focus is on commercial acts and whether or not such commercial acts are anti-competitive or not. This is the most important point. One cannot say that all sorts of exemptions have to be granted because SMEs are involved and carry out lobbying from the very beginning, so that the competition law cannot be applied to SMEs.

I think that the campaign for a competition law in Hong Kong is far more distorted than that in other countries and the situation here is the exact opposite of theirs. I have visited the agencies enforcing the anti-trust law in the United States and also visited Taiwan to study the fair trade law there. The Taiwanese Government told us clearly that Taiwan had worked on fair competition and fair trade for over a decade and on each occasion, the legislative process was the same in that it was very laborious. The members representing the business interests in the Legislative Yuan were very vocal. The Legislative Yuan members representing large corporations were the most vocal because large corporations oppose the competition law the most, believing that a competition law is primarily intended to protect SMEs.

The situation in Hong Kong is the opposite. SMEs are apprehensive of the competition law, fearing that consortia would use it to bully SMEs, so they hope that some practices of SMEs can be exempted from regulation. Sorry, the Democratic Party is very fair. Exemptions from the competition law cannot be given just because SMEs are involved. All parties have to join the competition and a level play field has to be provided to all parties, so that they can engage in fair competition. SMEs cannot have their way simply because they are SMEs.

We support SMEs, but we do not do so blindly. It is not the case that we support whatever SMEs say and we have to be reasonable.

Mrs Regina IP also made some outrageous and scare-mongering claims targeting barristers. Among the eight Members from the Democratic Party, none of us is a barrister, so obviously, her comments were directed at the Civic Party. However, the problem is that, according to her rationale, since many lawsuits would arise in the future, Members who are barristers have to declare what they would do in the next five years. In that case, do we have to require Dr Raymond HO and Prof Patrick LAU to consider if, on all matters relating to public works, there is any likelihood that they would bid for or deal with such works? We have to advise them not to vote and on each occasion, they have to withdraw from meetings. The logic is the same. She said that barristers had the opportunities to handle this kind of lawsuits, so there was a conflict of interest and roles. Is this reasonable? This is a claim that does not make any sense whatsoever, nothing other than an attack. I think this is not reasonable. How can barristers and lawyers have a clear idea of what their solicitors' firms are doing? Members may as well all become full-time Members and it should be specified that all 60 Members of the Legislative Council — there will be 70 in the future — cannot do anything other than working as a Member, just like me, who have worked only one job for many years, that is, the one in this Council. I think this would also be OK. All Members should do so and in the future, there would not be any functional constituencies and all Members would serve as full-time Members.

When I went through the information on the motion moved 19 years ago, I found it most interesting because what I said 19 years ago still applies today. Let me read out my speech 19 years ago. It is quite good to find that the speech for a motion moved 19 years can still be used and read out as it is nowadays. At that time, I said, "A fair trade policy ……" — of course, it is now called a competition law and it is called in different ways in various places but the aim is the same — "…… is formulated to combat the attempt, for all sorts of reasons, by business concerns to take advantage of their monopoly of the market, their vast capital, and their control of not only the means of production but also the product distribution network at the same time for the furtherance of unfair ends. These business concerns may actually set up market barriers making it impossible for their competitors to survive whilst scaring off any would-be competitor who may

wish to enter the market. They may seek to distort the market mechanism and raise prices artificially. They may restrict production and dictate unfair retailing terms. All of these practices are detrimental to the interests of the consumer. There is a general feeling of unease with regard to a fair trade policy. That feeling is particularly prevalent in the business community." — I wish to stress that these comments were made 19 years ago — "The reason for this is that they tend to associate a fair trade policy with negative government intervention in the context of a market economy. They fear that it will deal a blow to the spirit of free enterprise, and big business as a whole, and will effectively prevent the growth of private enterprise.". However, nowadays, there is no mention of the impact on large corporations, rather, it is said that blows would be dealt to SMEs.

"Contrary to popular misconception, the whole idea of having a fair trade policy is in order to protect our market economy. In the present state of development of capitalism, even people who have the greatest faith in market economy would also have to admit that there is no way a market economy can function properly at all times. The fact is that it often happens that the market is distorted and it is for a fair trade policy to rectify such distortions, when they occur, so that the positive forces of the market may be able to function properly." — I am still reading out my speech of that year — "I would like to stress at this point that while I am advocating the adoption of a fair trade policy it does not mean that I am doing so on the assumption that we are faced with an acute problem of unfair trade practice or indeed any real crisis.".

At the start of the debate, the Chairman of the Bills Committee, Mr Andrew LEUNG, said some people thought that after the passage of the Competition Bill, the prices of goods in supermarkets would drop and so would fuel prices, and that supermarkets would no longer charge slotting allowances. I am quoting what he said in his speech just now. Of course, the Democratic Party is not so naïve. How possibly could we think in such a way? Does one mean that after the passage of the Competition Bill, the prices of goods would then drop tomorrow? Of course not. The Competition Bill is just like the rules of a soccer game that enable the players on both sides to play a game according to clear rules, for example, no "pant pulling", awarding a penalty kick in the penalty box if someone touches the ball with the hand, and so on. These are the rules that all people have to follow. The Competition Bill is intended to lay down the rules and in the future, business operators have to follow these rules in business

operation. It is not designed to cause interference to business operators, but to ensure that business operators can compete fairly. This is the most point.

Not long ago, I had discussions with the Secretary about a small shop called 家農雜貨店(Farmer's grocery) in Sham Shui Po operated by two young brothers. They went to the Nissin Foods company to stock up on the most basic type of instant noodle, which is seasoned with sesame oil — Members must have eaten it before — and the recommended retail price was $3.3 per pack. They sold it at $3 but even so, they could only still make some 10 cents in profit. The shop owners were happy to sell the noodle for a thin profit margin because in Sham Shui Po, there are many grass-roots people and elderly people who went to their shop to buy a pack or two of instant noodles. The shop owners did not practise bundled sale — Members know that sometimes, the goods in supermarkets would be cheaper only if five packs are bought in one go and soft drinks would also be cheaper if eight cans are bought in one go — elderly people would not buy so many and would only buy in small quantities because the majority of them live on the fruit grant or CSSA.

Each day, the shop owners would sell the instant noodle in this way but one day, they received a phone call over which the supplier told them in clear terms that the Park'n Shop supermarket chain had expressed dissatisfaction with their selling the instant noodles at $3 per pack and that if they continued to do so, the goods would no longer be supplied to them. The reason for this is that the Park'n Shop supermarket located not far from this small shop was selling the instant noodles at $3.3 per pack, so it exerted pressure on the supplier (that is, Nissin Foods), threatening to order no more stock from the supplier if the small shop continued to sell the noodles at $3 per pack. The small shop only orders a small quantity of goods and compared with the Park'n Shop supermarkets, of course, there is a whopping difference in the volumes at stake. What does this case reflect? In the end, unfortunately, the small shop had to sell each pack of noodle at $3.3 in order to continue to sell the Demae Ramen instant noodle. After I had called a press conference on their behalf and made representations for some time, they can now sell the instant noodles at $3 per pack again. This is because the supplier said that it was just a misunderstanding and denied the accusation, saying that with better communication, it would have been able to continue to supply the goods and nothing would have happened. However, I could not be sure that this small shop would not be interfered with again after this

issue had subsided, so I found it necessary to hold a press conference in high profile.

What does this case tell us? The Parkn' Shop supermarket chain abuses its dominance in the market to influence its suppliers, so that small shops can be told to raise their retail prices, so as not to affect the prices set by the Parkn' Shop supermarket chain.

I also know the owner of a medium-sized supermarket operating on quite a large scale. The owner told me that if he wanted to sell Coca Cola at a lower price, he had to do so furtively like a thief by selling it at a lower price only on Saturdays and Sundays, when no inspections are carried out, because selling them at a lower price would make supermarkets complain to suppliers and he would be prohibited from selling the goods. He said that when selling goods at lower prices, he had to act like a thief because there are recommended retail prices for all the goods. Can this be considered healthy business operation?

Honourable colleagues in the Legislative Council and friends representing the business sector, at present, is there any law dealing with these situations? There is none. If one lives in a particular housing estate, one may be compelled to patronize a particular Internet service provider because both are run by the same operator. Be it the supermarket, the Internet service provider, the developer or the management company, they are operated by the same corporation. Such instances would pose obstacles to other operators in accessing these housing estates and doing business and if other operators encounter obstacles, what is this if not anti-competitive conduct? How can we counter such practices?

We can see all these real-life examples and do not want to see the distortion of the market, so the Democratic Party fully supports the Competition Bill, which is none too strong, too harsh or too potent but is only packed with a little bit of punch.

I so submit.

DR LAM TAI-FAI (in Cantonese): President, the 2012 IMD World Competitiveness Yearbook of the International Institute for Management

Development in Lausanne, Switzerland, has just been published and Hong Kong has clinched the title of being the world's most competitive economy for the second year in a row, outdoing the United States, which ranks second. The Financial Secretary, Mr John TSANG, said that Hong Kong clinched the title again because Hong Kong is freer and more open in trade compared with other economies, and it has highly efficient business operations, established rules, the rule of law and a market that operates smoothly. He also sang praises of himself, saying that the high efficiency of his Government was also a contributing factor.

President, I agree very much with the Financial Secretary's analysis and I am also proud of this achievement made by Hong Kong. Yet, at the same time, I am also worried about whether or not Hong Kong's existing advantages and core values can be preserved and for how long. Will it go from boom to bust, from wax to wane, and from good to bad?

President, we all know that the Government is increasingly skewed towards the financial and real estate industries and there are not enough targeted policies and measures to support the development of SMEs. If SMEs want to pursue upgrading and restructuring, it can be said that a myriad of difficulties lies in their way. The introduction of minimum wage has also dealt a blow to many SMEs. In sum, the Government's existing industrial and commercial policy practically does not favour the survival and development of SMEs in Hong Kong in a positive environment of competition.

President, today, the Legislative Council is conducting a debate on the Second Reading of the Competition Bill and later on, the debate on Third Reading and voting will be conducted. If this Bill is passed, will it actually be helpful to SMEs and favourable to Hong Kong's overall development, or would it deal a further blow to SMEs and affect the desire of investors to look for development opportunities? Frankly, up to now, I cannot make a proper judgment. Therefore, I hope that today, Honourable colleagues can have more rational and pragmatic discussions in the Chamber today.

President, as the representative of SMEs in the Legislative Council, I must deal with the voting very cautiously and rationally on this occasion because I am accountable to the SMEs and have to safeguard and protect their fundamental interests and long-term development.

President, in retrospect, at the beginning, various sectors of society actually all hoped very much that the Government could target at the monopolistic practices of certain industries, such as consortia operating supermarkets and filling stations, so that the interests of SMEs and consumers can be protected and at the same time, a level playing field can be created in the market. Therefore, I strongly support and agree with enacting legislation to regulate actions not conducive to competition in the market.

However, where does the problem lie? The problem is that this time around, the Government has put the cart before the horse in the legislative process and has not really given serious consideration to the actual situation of the economy and the state of development and difficulties of SMEs in Hong Kong, adopting a broad-brush approach in introducing legislation to impose regulation and expand the scope of regulation to cover all trades and industries in Hong Kong, including all SMEs and even ultra small enterprises. I believe such an across-the-board approach is overkill, a kind of false justice.

President, the Government has practically forgotten the original legislative intent. As the matter now stands, the Government has already dragged many trades and industries as well as SMEs that were originally considered unrelated into the water, thus landing them in crises that can otherwise be avoided. Frankly speaking, this has caused widespread concern and unease among SMEs and dealt blows to the desire and confidence of many SMEs in developing their business.

At the same time, in this process, the Government did not legislate against monopolization in a targeted manner either. I can tell Members that I am sure those big tigers and consortia will continue to engage in the monopolistic practices as they like and consumers' rights will continue to be exploited.

President, to my understanding, the purpose of a competition law is to ensure that competition can take place in the market in an orderly manner, so that economic efficiency and development can be fostered in a just, fair and open setting, so as to protect consumers' rights and interests. However, if the Government makes the provisions or instructions vague in the legislative exercise this time around, so much so that SMEs are wary about their future development and financial well-being being further affected or threatened, while consumers do not find the legislation particularly beneficial, and large businesses can continue

with their monopolistic practices, should Members not consider very prudently whether or not, given the present circumstances, they should support the enactment of legislation by the Government? Even if they support the enactment of legislation by the Government, should they not first demand that the Government sorts out the definitions and guidelines in all the provisions clearly before lending it their support?

President, many people say the Government is in a rush to pass the Competition Bill within this term of the Legislative Council because Chief Executive Donald TSANG gave the order that this must be accomplished, so as to deliver results. Frankly, given the present situation, I believe Chief Executive Donald TSANG already lacks the spirit to fight, nor does he have the mood to care about the Bill. Secretary, in that case, why do you still have to steamroll it through and be so rigid as to rush this piece of legislation fraught with defects and oversight through high-handedly within the tenure of this Legislative Council? Secretary, if, in the future, SMEs fall foul of the law and suffer losses due to the vagueness of this piece of legislation, as the official in charge of the policy on industrial and commercial development, how can you bear to see this?

President, at present, there are indeed far too many ambiguities in the provisions of the Bill and many of the provisions are very mystifying, general and empty, making compliance difficult. For example, such major terms as "prevention, restriction or distortion of competition" and "degree of market power", which were mentioned frequently in our discussions, are not clearly defined in this competition law, so I think this is really outrageous. What is the most outrageous thing of all? This piece of legislation is called the Competition Bill but it turns out that there is no definition of "competition" in the Interpretation, so do you not think this is laughable?

President, apart from the vagueness of the provisions, the Government also once provided several models of guidelines to the Bills Committee and guidelines that define the scope of "market" and "degree of market power". However, all these guidelines were very lengthy and complicated. The Government tried to explain them a number of times but no matter how it explained, it could not make them clear, so may I ask how possibly SMEs can understand them? Therefore, I

believe the Secretary should be able to sympathize with the unease and concern of SMEs about this piece of legislation.

President, the Government said that there were many overseas cases that can serve as reference, so there was no need to worry about confusions in enforcement. However, the problem is that given the numerous cases worldwide, which ones are applicable to Hong Kong and which ones are not? I believe both the Government and even the future Competition Commission (the Commission) cannot be sure. May I ask how SMEs can understand such profound provisions? If legal advice is sought for the slightest doubt, frankly, who is going to foot the bill? However, if they do not seek legal advice, they are afraid of falling foul of the law. Frankly speaking, a group of lawyers who are my good friends told me that should legislation be enacted, they would have many more business opportunities. President, of course, my good lawyer friends do not include Mr Ronny TONG because I do not know if he considers me a good friend and maybe he is also far removed from worldly affairs. Anyway, I believe that after the enactment of the legislation, lawyers would be one of the parties that stands to gain.

President, what causes me the greatest misgiving is that the Government did not try to draw up the principal legislation of the competition law earnestly and as clearly as possible in the first place, instead, it asks the Legislative Council to make sure that it would give the green light to the passage of the law within this session, then leave the important legal terms and specific provisions to the future Commission to formulate guidelines on them. As regards the guidelines to be drawn up by the Commission, according to the present arrangement, it is only necessary to carry out consultations before they can be implemented and there is no need whatsoever for the Legislative Council to scrutinize and pass them, so I utterly oppose such an arrangement. What can we liken this arrangement to? I remember an Honourable colleague once said that this was tantamount to asking the Legislative Council to issue a cheque, leaving blank the payee and amount, to the Government, so that the latter can fill them in. President, and Secretary, even though you have never done any business before, you would also know this course of action is most dangerous and unwise.

Separately, President, just now, several Honourable colleagues also pointed out that the power of the Commission is far too great. Apart from the power to

draw up guidelines on its own without being subject to scrutiny by other parties, it also has the power to monitor, investigate and prosecute companies. With regard to companies suspected of violating the guidelines, the Commission has the power to carry out thorough investigations. I believe such an arrangement …… even though it is subsequently proven that a company has not breached the law, its business reputation that it has painstakingly built up over time would be seriously affected all the same. President, it is precisely because there are many ambiguities in the competition law that are left to the judgment of the Commission while its decisions do not have to be scrutinized by other people — the Commission possesses such great powers but it is not subject to appropriate checks and balances — that I feel gravely concerned about it becoming an independent kingdom, as some Members pointed out just now.

In addition, the legislation specifies that the Commission is composed of five to 16 people but there is no provision on the proportion of members from the various sectors that are represented in the Commission, nor is there any provision on how many members should come from the business sector or SMEs. However, this piece of legislation will curtail the room of survival of SMEs, so may I ask how SMEs and the business sector can remain unconcerned? President, in contrast to other public bodies, why am I particularly concerned about the composition of the Commission in this instance? Because there are very clear legal provisions in respect of other bodies and their members only have to perform their duties according to the law and the rules, so in the process of interpreting and enforcing the law, a lot of subjective judgments can be avoided. However, this is different in the case of the Commission because there are many blanks and many provisions are unclear. Given the many grey areas, there will surely be enormous difficulty in enforcement in the future and I believe that in time, the Commission will have to spend a lot of time interpreting the law and making judgments on enforcement. Therefore, I am worried that many human factors would come into play.

I am also worried that in the future, many members of the Commission would not come from the business sector or do not have any business experience. As a result, the situation of the insiders being regulated by outsiders would arise. Precisely because they do not have hands-on business experience and have no knowledge of actual business operation, in the future, when they make judgments or carry out investigations, I am afraid they would tend to engage in empty talk

and build castles in the air, thus giving rise to a lot of misjudgments, wrongful accusations and misunderstandings. Therefore, President, concerning the Bill, my greatest worry lies in the Hong Kong economy, SMEs and the life-blood of people's livelihood being entrusted to the commission that is not appropriately monitored and lacks a clear piece of legislation for its enforcement. This is because the success or otherwise of this piece of legislation has a bearing on the survival and long-term development of SMEs and will also affect the confidence and desire of investors in making investments in Hong Kong in the future.

President, another concern of mine is that after the introduction and enactment of the competition law, many even harsher measures would be introduced one after another, inviting a wolf into the house, so to speak. In fact, the Government has said that in order to allay the concerns of SMEs at the early stage, a liberal approach would be adopted initially, so it has been made clear that initially, greater leeway would be given. That means after implementing the law for several years or for some time, when a review is conducted, the scope would surely be expanded and the penalty would surely be increased, so the road ahead is fairly treacherous. In other words, the *de minimis* arrangements mentioned by me just now would surely be tightened and those companies that originally are not considered to be engaged in serious anti-competitive activities will be rounded up gradually by the net of the law later on. One example is private action, which we have always been worried about. When a review is conducted, this would be included in the legislation. As we all know, private action is the most effective tool for consortia to deal blows to their competitors. When it comes to lawsuits, frankly speaking, even though SMEs may have strong grounds, when it comes to "burning money" and seeing whose money would last longer, they are simply no match for consortia. Even though they have grounds, they would still lose in lawsuits. Even if they do not lose in lawsuits, they still have to spend a lot of time on lawsuits. For this reason, at present, SMEs are very worried. If this competition law with vague provisions and unclear guidelines are allowed to make a landing, in the future, it would be too late to feel sorry and, just like the story of letting in the Trojan horse, one would be skinned alive gradually.

Lastly, President, I must stress that I support the Government in enacting legislation to regulate all practices that run counter to market competition but if

we deviate from the original legislative intent and in addition, if the provisions, definitions and guidelines are unclear and fraught with loopholes, and we cannot envisage how this piece of legislation would combat the monopolistic practices of consortia *(the buzzer sounded)* …… is it not necessary for us to think clearly instead of supporting the legislation blindly?

PRESIDENT (in Cantonese): Speaking time is up.

MR JEFFREY LAM (in Cantonese): President, after being scrutinized for nearly two years, the Competition Bill (the Bill) has now entered a critical stage. Since the introduction of the Bill, I have discussed with the Government on numerous occasions the inadequacies of the Bill and made a lot of suggestions. Besides taking on board the recommendations of the Hong Kong General Chamber of Commerce and most of my proposals, the Government has also amended some clauses accordingly.

Despite the lack of clarity in some provisions of the Bill, it seems that the Government hopes to pass this Bill hastily in order to get its job done within this session. Both the business sector and I share the view that it is inappropriate for the Administration to get the Bill passed first before drawing up guidelines for the relevant legislation.

President, the Government has earlier taken on board our proposed amendment to take away private actions because of the grave concern expressed by SMEs when the Bill was first introduced, that large consortia would sue small businesses and abuse the stand-alone right of private action. As everyone knows, given their ample resources and enormous financial strength, major consortia have teams of lawyers standing by all the time. This explains why SMEs are concerned that large consortia may bring actions to eliminate their rivals of a smaller scale or affect their businesses. Although the Court may move quickly to dismiss groundless claims, SMEs would still have to deploy resources in responding to the litigation and meet significant costs.

In order to reduce the anxiety of SMEs, the Government has taken on board our suggestions by removing the stand-alone right of private action. In addition,

we welcome that private actions may be brought by victims to follow on from a determination of a contravention by the Court.

The Government has also heeded our advice by defining the major concepts of the first conduct rule and specifying four types of "serious anti-competitive activities", namely price-fixing, bid-rigging, market allocation and output control.

In order to address the concerns of SMEs, under the first conduct rule, if the deals involved are considered "non-hardcore anti-competitive activities", the Administration proposes to widen the scope of exemption by raising the cap on the turnover of enterprises from HK$100 million to HK$200 million, with a view to reducing the chances of enterprises being caught by the law inadvertently.

President, the Government has also proposed the establishment of a "warning notice" mechanism for "non-hardcore anti-competitive activities". Under this mechanism, enterprises committing "non-hardcore anti-competitive conduct" may receive warning notices requesting them to cease such conduct rather than being prosecuted instantly. This will provide certain protection to enterprises and is considered the Government's first step towards enhancing the Bill.

As regards the suspected violation of the second conduct rule, that is, the abuse of a substantial degree of market power, the Government has raised the threshold of exemption for the turnover of enterprises from HK$11 million to HK$40 million. As a result, the percentage of SMEs being exempted has been raised substantially from 86% to 95%. We welcome this amendment because this is helpful to reducing the chances of SMEs being caught by the law inadvertently.

Nevertheless, President, as I mentioned at the beginning of my speech, our greatest concern is that SMEs are extremely worried that some parts of the Bill still lack clarity. If the Government is anxious to get its job done by passing the Bill hastily, then a number of SMEs might unwittingly breach the law.

For instance, we have repeatedly indicated to the Government that some wordings of the provisions of principle in the Bill should be defined clearly. We have also submitted relevant and specific legal provisions for reference by the Government. Although our proposal is very reasonable and there is still no need for the Government to make substantial amendments to the Bill, the Government has still not taken on board our proposal. I feel very much disappointed by this.

The original intent of the competition law was to protect SMEs to prevent them from suffering loss or damage due to the various anti-competitive tactics of large consortia to enable SMEs to enter the market more freely to operate business, enhance competition and, in the long run, lower prices in the market, thereby benefiting consumers. But it is most ironical that the Bill has aggravated the misgivings of SMEs and reservations about the enactment of legislation. Should the Government reflect on where the problem lies and examine if it has made every effort to allay the misgivings of SMEs? I believe the Secretary will make this comment in his response later: "I have already held discussions with many enterprises, chambers of commerce and SMEs." Nevertheless, such discussions might not be able to put enterprises' minds at ease. Why are there still repercussions after the discussions? This demonstrated that the problems still remain.

Furthermore, under the Bill, should "serious anti-competitive activities" are involved, enterprises, regardless of their total turnover, will not be exempted, and this will pose a serious risk to SMEs because they might have engaged in such activities simply for the sake of survival or competing with stronger rivals. Yet, these are no grounds for exemption and they still have to be governed by the competition law.

President, another original intent of the competition law was to combat activities undermining competition. However, the current definition of "have as their object or effect the prevention, restriction or distortion of competition" in the Bill is too vague, thereby restricting many business activities.

President, to allay the concerns of SMEs, we have once proposed to the Government to make reference to the practices of Australia, New Zealand, Canada and South Africa by including the wordings of "substantially lessening competition" in the competition law, for doing so is more consistent with its

original legislative intent of combating practices undermining competition while protecting SMEs from being caught by the law inadvertently. Should "substantially lessening competition" be adopted by the competition law as its criterion, the Commission and the Competition Tribunal will be able to make more effective use of their resources to focus on combating conduct "substantially lessening competition".

Furthermore, having this criterion, namely "substantially lessening competition", included in the law is more desirable than leaving the decision to the Commission. Otherwise, Hong Kong will face a very great risk, for the Court might follow some obsolete or outdated precedents of the European Union, thereby resulting in excessive intervention in the market system and stifling of healthy and positive competitive activities.

Another consideration is economic efficiency. In a free market, enterprises with excellent economic efficiency can keep improving their products and lowering costs so that inexpensive and quality products or services can be launched. Given its excellent efficiency, SMEs can develop and thrive to compete for a bigger share of the market. In the end, their rivals will inevitably lose customers, whereas enterprises with no desire to make progress will even be driven out of the market. This phenomenon, which can be found all over the world, may have a short-term impact on market competition. The Government has also pointed out that when the efficiency of business agreements far exceeds the impact produced by competition, the relevant practices will be tolerated. This means that economic efficiency can make a good case for exemption from a competition law. Unfortunately, this legislative intent cannot be seen in the existing Bill.

President, a point the regulatory authority must consider is that the overall market's long-term interest brought by certain business practices might far exceed their short-term impact on some market players. In the long run, enterprises should constantly improve their products and lower costs to solicit customers. In this connection, the competition law should specifically require the regulatory authority and the Court to give serious consideration to this phenomenon of competition and evaluate whether the relevant practices can be exempted from the regulation of the competition law on the grounds of economic efficiency. Although this requirement has been clearly set out in the provision on regulating

the merger of enterprises, it is not stated clearly in the provision regulating other business practices.

In addition, although the Government has lowered the pecuniary penalty for contravening the competition law from the original cap of 10% of global turnover to 10% of local turnover for three years, the Bill has not provided a clear guideline for the calculation of the cap. As a result, enterprises are concerned that they may face astronomical fines and ultimately, they tend to be cautious and meticulous and do less so as to make fewer mistakes and avoid being caught by the law inadvertently. Consequently, consumers and the overall economy will suffer. In our opinion, the pecuniary penalty cap should be calculated in terms of the turnover of the products or services involved in the contravention, rather than the turnover of all sectors of businesses operated by the relevant enterprises. For instance, if only the financial business operated by a financial and food retail enterprise is found to have contravened the law, the turnover of its food retail business should not be taken into the calculation of the pecuniary penalty.

Lastly, the Government has proposed to define an undertaking that has a "substantial degree of market power" in a market as one possessing a minimum market share of 25%. In my opinion, this ratio is on the low side. Moreover, the Government has not considered the fact that Hong Kong is a small and open economy with a small number of practitioners in individual sectors. Enterprises may be prosecuted at any time for exceeding the cap. In comparison, the ratio is currently set at 40% or above in many countries.

President, the aforesaid proposals are not only extremely crucial, but also simple and direct. They can bring the Bill more in line with the policy objective of enhancing Hong Kong's competitive edge and make it compatible with the best international practice. In fact, it is unwise for the Government to request this Council to pass the Bill first and draw up the relevant guidelines on the Ordinance later. Nevertheless, the Administration has turned a deaf ear to our repeated advice. Whenever government officials failed to give us a satisfactory account, they would say that the decision would be left to the Commission …… or to be decided later by members of the Commission. We consider it extremely unwise

to do so. As it is hard to predict the future, why does the Government not give the public and the business sector a clear account to their satisfaction?

The Bill, if passed rashly, will not only lead to a bloated bureaucratic system, but also increase business risks, thereby lowering Hong Kong's appeal as a regional business hub. Insofar as consumers are concerned, enterprises might pass the additional cost brought about by the competition law to users, thereby pushing up product prices. The belief held by many people that the enactment of a competition law can lower the prices overall in Hong Kong is totally unfounded. With reference to overseas experience, a competition law will only result in higher prices and fewer choices. Although I think that the aforesaid comment is misleading, I cannot produce any conclusive evidence to substantiate my argument. But still, I hope Members can deal with the competition law more carefully.

Lastly, for the well-being of Hong Kong, I hope the Government can spend more time listening to the views expressed by the business sector carefully, particularly those on the competition law. According to the Government, a competition law is an excellent piece of legislation. Like a beacon leading us to a bright future, it seems that everything will be fine once a competition law is put in place, and consumption will be much cheaper. However, the Secretary has forgotten that this beacon is shrouded in a cowhide lamp shade. As a result, it is pitch dark everywhere and everyone is unhappy.

President, I so submit.

MS AUDREY EU (in Cantonese): President, I believe television viewers who have been watching the debate on the competition law closely will wonder why the law has turned into a wrestling between the business sector and the legal profession. In particular, Dr LAM Tai-fai alleged in his speech just now that lawyers certainly hoped to see the competition law passed so that they could make huge profits through lawsuits in the future. Mrs Regina IP also advanced a similar argument in her speech last week, saying that the competition law would only benefit Queen's Counsels who could charge tens of thousands of pound sterling in litigation fees. Therefore, unless Members who were also Counsels

indicated that they would not take up such cases, they should not cast their votes or even speak.

Of course, I am a Counsel. I believe no one can tell what will happen after the passage of the competition law. However, I find the Member's remark very interesting. It can be said that all laws scrutinized by Members will involve litigations. For instance, it can be said that the Companies Bill currently under scrutiny will lead to a large number of litigations in future. Another example is the Minimum Wage Ordinance passed by the Legislative Council of the last term. It can also be said that many small employers and SMEs could face litigations after the implementation of the minimum wage, thereby benefiting lawyers. The Copyright Ordinance is so abstruse that ordinary lawyers might not be able to understand it. As they must consult an expert, it is certainly better to hire a Queen's Counsel, and so it is most preferable for the Copyright Ordinance not to be passed.

I have no idea if this happens in the parliamentary assemblies all over the world — Anyhow, lawyers should not be allowed to participate in parliamentary work because the passage of whatever law will bring them potential benefits. But interestingly, this argument can conversely be applied to the business sector, too. Members of the business sector can argue that all laws will affect their business environment, making them face legal battles at any time, and so their interests will thus be undermined. Such being the case, should they not be allowed to speak and vote, too? This is because they might be affected at any time in the future and become defendants for breaching the relevant laws. Therefore, such arguments are not only totally unfounded, they are also totally unreasonable.

The competition law agenda has been in existence for quite some time, and it is not until today that we begin discussing it. Many colleagues pointed out in their speeches that there were many similar laws in many places around the world. The competition law is not a novelty. It cannot be said that only lawyers may stand to benefit from it, whereas all SMEs can only keep on crying because of oppression.

Just now, Dr Margaret NG indicated in her speech that the Consumer Council (CC) was actually one of the most significant stakeholders in supporting

and promoting the competition law. I have served in the CC during the 1990s, and I wonder if Members still remember that Prof Edward CHEN was the then Chairman. People familiar with Prof CHEN should know that, being President of Lingnan College at that time, he was specialized in economics. Taking market competition very seriously, he had been devoting himself to research in the hope that a competition law could be enacted in Hong Kong. While serving as Chairman of the CC, he had completed a number of study reports through the CC. I recall that a study report on supermarkets published by the CC in 1994 led to great rancour against the CC among supermarket operators who believed that they were being constantly targeted. The then CC had also published many other reports about monopoly or oligopoly, and its targets included fuel companies and banks because the banking sector often joined hands in setting interest rates at that time. Certainly, reports were also published about telecommunications services. As we came to know subsequently, after the opening up of the telecommunications market, the long-distance telephone services, which used to charge exorbitant fees, are charging very low fees now. These are some of the benefits brought by market competition to consumers.

Mrs Regina IP happens to be back in the Chamber now. Her personal attacks remind me of her telephone conservation with Mrs Selina CHOW during which she told Mrs CHOW her intention to run office of the Chief Executive. When she was asked why she did not support LEUNG Chun-ying, she replied that Mr LEUNG Chun-ying would harm people but she would not. I always believe that anyone who does not support a certain law can advance his argument. There is no need for him to use personal attacks to defame individuals or individual sectors. Should he think that there are any inadequacies in the competition law, he may propose amendments for Members' discussion.

One of the arguments advanced by Mrs Regina IP is her criticism of the part of the Blue Bill concerning consumer protection, to which little reference is made after a thorough search. I would like to remind Mrs IP here that she might as well support an amendment to be proposed by Mr LEUNG Kwok-hung later on. We had asked the Government during the scrutiny of the Bill whether consumer protection could be included as one of the functions of the Commission. Members should know that sometimes it is really not worthwhile to speak in favour of the Government, thus it never occurs to me that I should be

a royalist. I believe all royalist Members will know that sometimes it is really a tough job to speak in favour of the Government.

It is precisely because the Government refuses to include this function that Mr LEUNG Kwok-hung will propose an amendment during the Committee stage to add "in accordance with the objective of enhancing economic efficiency and thus the benefit of consumers through promoting sustainable competition" as one of the functions of the Commission. If Mrs Regina IP has not noticed this amendment, she might as well pay attention to it. However, if she has noticed it, I hope she can give it her support later because competition can really lower prices, and consumers will thus be benefited.

In addition, Mrs Regina IP also queried in her speech why the Bill should be called "Competition Bill", but not "Fair Competition Bill". We also raised a similar question earlier as to whether the sense of "fairness" should be stated clearly. This is similar to this question raised when one of the Policy Bureaux was named the Development Bureau — Will it convey a clearer meaning if the Development Bureau is called "Sustainable Development Bureau" instead? Although the word "fair" is not stated explicitly at the moment, many provisions in the Bill actually seek to promote competition with a view to bringing certain elements of fairness to the market.

President, although the Civic Party supports the Bill, we understand very well that the competition law cannot resolve all the problems in the market. Many people hope that competition can be introduced after the passage of the Bill to resolve some long-standing problems, such as the problem with oil companies which are often quick in raising and slow in reducing oil prices and monopolization by supermarkets. As pointed out by Mr Fred LI just now, a food store called 家農優質食品 was compelled to sell Nissin instant noodles at exorbitant prices, and 759 Store was also reportedly compelled to raise its prices of Coca-Cola. Such examples can be heard from time to time. Does it mean that all these incidents can definitely be resolved satisfactorily after the passage of the Bill?

As everyone knows, the Government will still not take any enforcement action after the passage of many laws. For instance, even though the law on switching off idling engines has been enacted, we can still see cases of vehicles

failing to switch off idling engines everywhere. Should we simply refrain from enacting laws because of these circumstances? After all, the enactment of legislation is the first necessary step before laws can be put in place for people to follow and enforced by all means.

Furthermore, many sectors in Hong Kong are dominated by oligopoly, such as property developers. Very often, the exorbitant land and property prices in Hong Kong are attributed to collaboration among property developers in land auctions or price control. Can investigations, follow-ups and enforcement actions be conducted in respect of these issues? Similarly, it does not mean that all these problems can definitely be resolved after the passage of the relevant Bills, so that Hong Kong people can then purchase properties at cheap prices, and oil prices will definitely fall instantly. We cannot pin excessive hope on all this. Even though there is nothing we can achieve, it does not mean we can simply not do anything to enact laws because this is, after all, the first step. We must make provisions for the Commission and certain guidelines before we can follow this direction to change some of the unlawful, unscrupulous and unfair practices of competition in the market.

In addition, I wish to point out that some colleagues have claimed that the Bill still has many unresolved problems. After looking up the information, I find that after the Bill was tabled before the Legislative Council in July 2010, we have spent two years on discussions and convening numerous meetings one after another. Members referring to the reports prepared by the Bills Committee will find that, unlike those Bills tabled by the Government urgently for Members to close the case hastily because of the imminent change of government, the suggestions put forward by many deputations have been set out in detail in these reports and views on the pros and cons of the Bill have also been included. In fact, it has taken considerable time and detailed discussions before the Bill has come to this step today. Therefore, this enactment of the law can definitely not be described as rash.

Certainly, the Bill still has many imperfections. Mr Ronny TONG, Mr Fred LI and Dr Margaret NG have mentioned separately in their speeches that the Government has actually kept making concessions. This is why there are comments that the Government has had an unknown number of teeth extracted or

loosened. For instance, the Government has made more than one concession in regulation and the exemption of SMEs or "micro enterprises", so to speak. We have told the Government clearly that although it must listen to opinions, we still hope that it will not retreat to such a state that the Bill totally loses its effectiveness. Because of its attempt to take a middle-of-the-road approach, the Government has, on the one hand, listened to dissenting views, and on the other, pushed the legislative work to another stage. Even though the Bill has imperfections, the Civic Party will still support its passage for at least the first step can be taken for regulation purposes.

I hope we can complete the enactment of this piece of legislation before the end of this term. Now, we can only hope to achieve this because some Members have threatened to stage a filibuster and many Members have indicated their objection to the Bill. Whether the Bill can eventually be passed is still unknown. However, even if the Bill is really passed, I hope the Secretary can understand that this is just the beginning because a Competition Commission (the Commission) will be set up in future and many consultation exercises have to be conducted and further discussions have to be held with Members (particularly opposing groups and members of the business sector) on the details. It is always difficult to enact a perfectly satisfactory law, and it is also hard to make absolutely clear provisions, for there are bound to be ambiguities and areas which can cause misunderstandings or concerns. There is a great need for the Secretary and the Government to continue to discuss these issues with opponents of the Bill. It is also hoped that, after the implementation of the relevant framework, system, guidelines and legislation, the Government or the Commission can let people see that its overall framework can ensure that the competition law meets or strives to meet consumers' expectations. In this respect, I believe the CC will give the Government and Hong Kong society a lot of advice.

This is a long-awaited law because, as I mentioned just now, discussions already begun on the lack of a competition law in Hong Kong while I was serving in the CC back in the 1990s, or nearly two decades ago. Hence, very often, we could not do anything even though we were clearly aware of monopolization by large consortia or oligopoly. In the past, only the Competition Policy Advisory Group could name and criticize any enterprise. There was nothing much we

could do. Hence, if this Bill can be passed, I hope the Government will not let those people who support the enactment of the law down.

Thank you, President.

MS MIRIAM LAU (in Cantonese): President, like members of the public, the Liberal Party wishes to have a truly free and fair market. However, Hong Kong is a very small place where individual local markets have consistently been subject to serious distortion, resulting in oligopoly by oil companies and frequent cases of "prices rising quickly but coming down slowly". There is also the problem of supermarket hegemony because one or two supermarkets are particularly huge in scale and have always manipulated prices.

All these problems have given cause for criticisms but there has been no change or improvement. We all expect the Government to do something to put an end to monopolization or to put down the "big tigers", in order to ensure greater commercial viability for SMEs and provide a level playing field for the SMEs to compete with the larger enterprises. Most importantly, we have to give the public more choices and when there is competition, the public can buy goods at less expensive prices. This will be helpful to Hong Kong as a whole and also to the SMEs and consumers, thus creating an all-win situation. We all miss those days after the opening up of the telecommunications market because following the abolition of the exclusive telecommunications licence, many SMEs were able to enter the market and with competition, the prices of telecommunications service had come down drastically, thus enabling members of the public to enjoy less expensive telecommunications service. This is an example of what we all miss.

In fact, after the Government had proposed the enactment of a competition law, the industries had all along hoped that the Government could introduce an anti-monopoly law and strongly put forward this demand to the Government. Regrettably, when the competition law was finally introduced, we were disappointed to find that the Competition Bill now tabled for deliberations by this Council is primarily not an anti-monopoly law. Rather, it is a Bill which fails to benefit any of the three parties concerned as it cannot put down the "big tigers" but will create troubles for the SMEs which are worried about being forced to

leave the market and it also cannot in the least benefit consumers, resulting in an "all-lose" situation.

For instance, we all hope that the problems of "prices rising quickly but coming down slowly" and supermarket hegemony can be addressed, but it seems that this Bill can do nothing about these problems, for it emphasizes only the regulation of price-fixing. When the oil companies take concerted actions to increase prices quickly but reduce them slowly, they may do it consecutively in that one company may raise the prices first whereas the other will follow suit a couple of hours later. It can be said that there is a tacit agreement among them, and they basically do not need to come together to fix the prices. They can do it by tacit agreement. Even if an investigation is carried out in accordance with the ordinance, the major consortiums all have teams of lawyers to help them handle and tackle these cases, and I am afraid it is utterly difficult to find evidence to substantiate charges against them. The only effect that can be produced is to stir up a transient furore at the most.

The case of supermarkets is just the same. Some people have criticized them for invariably offering discounts for the same range of goods, which means that there is no competition. When they are investigated, they will argue that they have only set the prices based on the pricing of their competitors and so, there is no question of collusion between them. The hegemony thus continues to prevail, so what can you do about them?

Mr WONG Kwok-hing made a very correct point earlier, that consumers have a lot of complaints against supermarkets, but he agreed that the competition law cannot in the least protect the interests of consumers; nor can it address the problems mentioned by me just now.

In fact, the Liberal Party proposed a few years ago that in order to address this problem, a target-specific law should be enacted to target industries in which we think there is anti-competitive conduct, including the oil companies and supermarkets. The Government has refused to listen to us and insisted on the introduction of a cross-sector competition law.

As regards the question of what purpose this competition law can serve, two days ago I read an interview with the Chief Executive of the Consumer

Council. She said that the competition law is "toothless" and is just better than nothing. In saying that it is "toothless", she does not mean to liken the competition law to having many of its teeth pulled out. This is not what she means because even though it has a "full set of teeth", the competition law will remain to lack bite because it cannot effectively regulate the major consortiums. She said in the interview that if they fix the prices secretly, the only way to curb them is for somebody to blow the whistle and if nobody blows the whistle, nothing can be done about them and it will be useless to probe into them. It is thus imaginable to what extent the competition law is useful.

Therefore, the Government has always refrained from giving the public an assurance by undertaking that the passage of the competition law will definitely result in oil prices coming down or price reductions in supermarkets, hence preventing price manipulation by them. The Government can do nothing at all; nor has it made any undertaking that these results can be achieved. If the Government does have the courage to make an undertaking that these results can definitely be achieved, including reduction of oil prices, supermarkets being brought under control, and SMEs being able to compete with supermarkets in a level playing field or at least having some competitive edges with which they can do business on the side, then when there is room for them to do business, how possibly could confidence be so lacking in them? If the Government can give them this assurance, will the people have greater confidence? Regrettably, the Government has refused to give them this assurance all along. How can we expect this law to be able to put down the "big tigers"?

Such being the case, is it possible to control them by the second conduct rule which prohibits "abuse of market power"? The authorities again dare not say that it can definitely work, because with regard to the meaning of "market" or the meaning of "abuse", or what market share percentage will constitute a "substantial degree of market power" and will hence be brought under regulation, the Bill has not provided clear definitions, and all these will have to be decided by the future Competition Commission (the Commission). That said, I know that the Secretary will tell us in his response later that the market share percentage may be set at 25%, but the definition of "market" is really unclear.

President, from this we can see that the Bill obviously cannot catch the "big tigers". Worse still, it will create a white terror for SMEs, because the legal

provisions have covered too wide a scope indeed and they are too lax with too many grey areas, thus making it easy for SMEs to fall foul of the law inadvertently.

In this connection, we have been urging the Government to clarify the grey areas in the Bill, in order to prevent SMEs from falling foul of the law unwittingly, and we also urge the Government to grant reasonable exemption to SMEs on a timely basis. But even though the Administration has provided a reference copy for each of the three guidelines on the rules in the Bill to allay public concern, the effect has turned out to be just the opposite.

In May last year, the Administration published a reference copy of the guidelines on the first conduct rule which prohibits anti-competitive conduct and agreements, setting out "12 sins". This has nevertheless aroused unprecedented concern among SMEs. It is because the scope covered is so broad that SMEs can really fall foul of the law easily, given that such simple daily practices as sharing information and joint purchase frequently adopted by SMEs, as well as some normal commercial acts, such as sharing among them the latest market information and taking steps to reduce the cost, are also included. Another example is that there may be room or projects for co-operation among two or three SMEs with the purpose of contending with major enterprises, but these collaborative efforts may easily fall into the scope of regulation under the first conduct rule. Will this not greatly undermine their competitiveness and reduce the room for their operation? Will this indirectly give a boost to monopolization by consortiums, and will you become an accomplice to monopolization?

The Administration then published two reference copies, one for the guidelines on market definition and the other for the guidelines on the second conduct rule which prohibits abuse of market power. The contents are hollow and complex, and they are not in the least helpful to allaying public concerns. For instance, the latter prohibits undertakings with a substantial degree of market power from excluding its competitors by setting predatory prices below cost, but it is not known as to how this should be defined or to what level the prices should be lowered to constitute an offence. An example is that supermarkets have recently reduced the price of fresh pork steeply to the extent that it is even cheaper than that in wet markets. Housewives certainly welcome this and they will all turn to supermarkets to buy pork. But what do the meat stalls, which are

among the SMEs, think about this? While this can be protection for consumers, this has aroused criticisms among the SMEs. Does the competition law allow supermarkets and meat stalls to compete with each other by slashing prices? In what manner can prices be reduced to be in compliance with the law? This is really a headache. On the contrary, consumers may ask what benefits they can gain. They will think that price reductions can benefit them, but if the Government does not allow them to reduce prices, they will ask how they, being consumers, can be benefitted.

Furthermore, as I have just said, the definition of "market", which is important in the Bill, has remained unclear. Although the Government has made concessions and as the Secretary for Commerce and Economic Development said in his concluding speech in this resumed Second Reading debate on the Bill, the minimum threshold for "abuse of market power" — enterprises with a market share of 25% or more will be regarded as engaging in the anti-competitive conduct of "abuse of market power", if the Commission considers in future that "market" should be interpreted on a geographical basis and if "market" is narrowed to such small communities as Tin Shui Wai where there are only three shops in the same business or three restaurants or jewellery shops, each with a business turnover of some $3 million monthly, which add up to be over $40 million, they may already exceed the threshold for exclusion. While it is obvious that the SMEs will be caught by the law, they cannot be excluded from the rule. The second conduct rule, which is originally intended to prohibit cases of the big bullying the small will turn out to be a trap for all enterprises irrespective of their scale, and this entirely defeats the policy intent.

Moreover, the Administration has twice made concessions by relaxing the threshold for "de minimis arrangements" in that the turnover threshold for exclusion from the first conduct rule (which concerns anti-competitive conduct) is increased from $100 million to $200 million and brought on par with the threshold for exclusion adopted in the United Kingdom's Competition Act. And the turnover threshold for exclusion from the second conduct rule (which concerns abuse of market power) is also increased from $11 million to $40 million, which, as claimed by the Government, will result in 95% of all SMEs being excluded from the rule. In spite of these, the fact is that for many SMEs engaging in businesses which require huge capital input but have small profit margins, such as travel agencies or restaurants, even though their turnover may seem to be substantial, their profit is very small, and I believe they may not

necessarily benefit from this arrangement. A more reasonable approach is to set the threshold for "de minimis arrangements" at $500 million to align with the listing threshold of the Securities and Futures Commission. This has been a demand made by the SMEs but rejected by the Government even though it has been raised many times.

In the absence of reasonable protection in exclusion, it is foreseeable that SMEs will all be forced to pay exorbitant "compliance cost" for the competition law. Unlike major enterprises, they do not have a full team of lawyers at their beck and call. On receipt of complaints against SMEs, the Commission will issue a warning notice to them. Even if those four serious anti-competitive activities are not involved, a warning notice will at least be issued. But what will happen before that? They will go to the SMEs concerned to carry out investigation; they will search the place and take away documents, and everybody will then know about it. Then, they will take away the computer, papers, and so on. Is there any more reputation to speak of for that enterprise? Everybody will know that it is under investigation by the Commission. The SMEs are, therefore, very worried, not to mention the huge litigation costs to be incurred in the event that prosecution is instituted against them.

Given that the provisions are hollow and cover a wide scope of activities, it is very easy for SMEs to fall prey to ill-intentioned competitors which may make use of the legislation to file complaints or make allegations against the SMEs. The law may even degenerate into a tool for major consortiums to oppress SMEs.

The Administration has undertaken to remove the stand-alone right of private action in the Bill and the right of the Commission to impose, by way of an "infringement notice", a fine of $10 million on enterprises suspected by the Commission with a reasonable cause to have acted against the rules. As regards non-hardcore anti-competitive conduct, the Bill has provided for the "warning notice" mechanism, and after receiving such a notice, the SME is allowed to correct its malpractices within a certain period of time to avoid prosecution. Furthermore, the maximum penalty has been lowered, and there is the guarantee that merger activities will not be affected. The pulling out of all these "six molars" can only reduce the damages that may possibly be done to the SMEs.

However, the Bill is still fraught with loopholes, and the SMEs have remained gravely worried. I have just mentioned some of their concerns, and the Government has still turned a blind eye to them. The Bill is still full of landmines, and the SMEs are very worried that they may inadvertently step on these landmines and be blown to pieces.

Therefore, the guidelines on the first and second conduct rules to be drawn up by the Commission in future are very important. From our experience gained in the legislation on minimum wage, we no longer believe the Government. The Government should table the guidelines to the Legislative Council for Members' scrutiny and discussion. In this connection, we will support the amendment proposed by Mrs Regina IP urging the Government to table these guidelines before the Legislative Council, so that we can examine them clearly with wide open eyes and when the SMEs can find a way to comply with the rules and know what they should do before the rules are brought into force. We will support the amendment.

As far as we know, some major business chambers which still take exception to the Bill have said categorically that they would strive to protect the SMEs, stressing that they have great reservations about the Bill. But just now, I heard Mr Andrew LEUNG say, after making a lot of remarks with which I very much agree, that he would accept the Bill though reluctantly. This, I think, is incomprehensible indeed.

Mr Jeffrey LAM criticized the Government for being unwise, adding that the Government has made everybody unhappy. He did not tell us his position earlier on, but I wonder if he will support this Bill on behalf of the Hong Kong General Chamber of Commerce.

I think this Bill is a rudimentary "Grade A counterfeit" competition law, which is downright impossible to achieve the objectives of promoting competition and protecting consumer interests. Even though we understand that many members of the public may wish that in any case, we should make a start first and effect further improvements gradually to the legislation after it is enacted, as the Bill is fraught with loopholes and we have great reservations and questions about this Bill which, we think, cannot benefit any of the three parties concerned as it fails to curb the major consortiums and will cause grave concerns

among the SMEs without bringing any benefit to consumers, we cannot support a Bill which is a "Grade A counterfeit", in order to pre-empt the endless troubles that would otherwise follow. Unless the Administration will introduce an anti-monopoly law that can truly curb the major consortiums, in which case the Liberal Party will give our full support because this is the way to truly promote competition and benefit consumers, I am sorry to say that this competition law under examination now is incapable of serving these purposes and we, therefore, cannot support it. We will vote against the resumed Second Reading of the Bill, and if the Committee stage amendments to be proposed by the Government later are passed, we will abstain in the vote on the Third Reading of the Bill.

Thank you, President.

MR TOMMY CHEUNG (in Cantonese): President, I am not going to repeat the details of the entire law just explained by Ms Miriam LAU. I very much agree with her remarks, and so does my sector. Hong Kong has all along been a society with free competition. Seldom does the Government enact legislation to create obstacles to competition. With regard to this Competition Bill (the Bill) introduced by the Administration, we can still accept it if its effect is purely to impose regulation on the major enterprises because major enterprises only account for less than 10% of all enterprises in the territory. But if it will affect the remaining 90% or more of the enterprises which are made up of SMEs, that is definitely not a blessing to Hong Kong.

First of all, the provisions of this Bill are complex and given that not all SMEs have their own legal adviser, they are likely to spend a sum of money on lawyers' fees to seek their advice in future. Take my constituency, namely, the catering sector as an example. Many of my constituents are small and medium-sized catering establishments, such as local bistro cafés, small restaurants, and so on, which add up to several thousands in number. Unlike statutory bodies, they do not enjoy exemption. The employers of these SMEs are not highly educated, and it is impossible for them to understand the provisions of the law. Even if they pay a lawyer to explain the details to them, not all lawyers can make them understand the provisions because they are not business operators who have attained high educational levels. Moreover, if they have to

turn to lawyers, a huge amount of expenditure will be incurred and their operational cost will be increased. As we all know, the fees for legal services are by no means cheap, and as rental is exorbitant, wages are increasing and inflation is ever rising to reach an all time high, this law has no doubt imposed a heavier burden on my sector.

Let me cite an example. The first conduct rule expressly prohibits price-fixing. I certainly support the prohibition of price-fixing but as SMEs may sometimes conduct exchanges on market prices, this may, in future, cause suspicion of price-fixing among them. As far as I know, the small business associations in my sector and in other industries have come together before to conduct exchanges on the prevailing market prices or to remind their members of updating their prices. But this move may constitute a breach of the provision on price-fixing under the first conduct rule. On this point, the Government may argue that the Bill already provides for a turnover threshold for exclusion at $200 million which will ensure that many SMEs will not be caught by the law. But the Administration fails to understand that despite the provision of exclusion, when SMEs face such a complex law and have only half-baked knowledge of the provisions, and fearing that they will be caught by the law, they will only refrain from engaging even in normal behaviour, such as exchanging information. I must ask the Administration: Is this not tantamount to dealing a blow to the business environment of the SMEs, including those in my constituency, the catering sector?

Furthermore, I do not see that this law will be of any help to the industries or SMEs. In my sector there are many stall operators running small businesses in wet markets. Many colleagues, such as Mr Fred LI and Ms Miriam LAU, also mentioned earlier the problem of market stalls being bullied by supermarkets. Members are actually unlikely to be unaware of this problem, as we can always hear these complaints when we go to a wet market. Many years ago, many stall operators hoped that I could support a competition law, thinking that with a competition law, the supermarkets could no longer be so overbearing and market stalls could then find more room for competition. But let us take a look at this legislation here. Can it achieve these results? I do not think that it is possible, because supermarkets place their orders in bulk, so they certainly have strong bargaining power against suppliers. Do you think that suppliers will supply goods to stall operators in wet markets at lower prices in future after this

legislation is enacted? This may be nothing more than wishful thinking. Mr Fred LI said earlier that they are certainly not so naïve as to think that this law will result in market stall operators being supplied with goods at lower prices and that they only wish to have a fair platform for all. But I would like to ask: Since this law can neither help enhance the bargaining power of SMEs nor enable stall operators in wet markets to purchase goods at less expensive prices, and the many grey areas that can be found in the law will increase the risk of market stall operators being caught by the law, does it not mean that the losses will ultimately outweigh the gains? How can it help them by providing them with greater room to compete with supermarkets?

Moreover, I said earlier on that the provisions of the Bill are complex and that ordinary members of the public do not find them easily comprehensible, but even the guidelines are also complicated, difficult to understand and ambiguous. The Administration has conducted public hearings to listen to public views on the draft guidelines. During the hearings, and I believe the Administration must recall, many enterprises expressed opposition and pointed out that the draft guidelines provided by the Administration were ambiguous. So, on behalf of my constituency, let me say this to the Government: We do not understand it. We really do not understand it.

President, speaking of understanding, what I consider even more baffling is the Hong Kong Trade Development Council (TDC) which is obviously competing for benefits with the public can be exempted from the regulation of the law. I can always see cases of "quod licet Jovi, non licet bovi", and I feel somewhat scared. This exemption has invoked the same fear in me. The provision of exemption to statutory bodies runs counter to the fundamental spirit of this law. The TDC is the most active market player among all statutory bodies as it accounts for a market share of 45% in the exhibition industry in Hong Kong, which almost amounts to monopolization. How can such a market monopolizer continue to enjoy exemption after the enactment of this law? What logic is this? Of course, I very much respect the TDC, and many colleagues consider that it should be granted exemption because the TDC has indeed helped many SMEs open up the international markets. That said, I still do not understand the logic in it.

Some Members said that I should not oppose the exemption arrangement for statutory bodies, but I think in order to ensure fairness, and if exemption will be granted, it should be granted to SMEs altogether. In fact, this can be done in a very simple way. There are about 19 000 licensed restaurants in Hong Kong now, and any one of the largest listed enterprises takes up a market share of no more than 10% at the most. Such being the case, the entire industry is highly competitive and so, Secretary, exemption may as well be extended to the entire sector. Since we are already so competitive, why should we be bundled together for competition?

President, as I said at the outset of my speech, Hong Kong is a society with free competition, and this is also a factor on which the success of Hong Kong hinges. This Bill, which is complex and difficult to understand, introduced by the Administration is superfluous. It is not conducive to upgrading the competitiveness of Hong Kong and worse still, it has created much more confusion for the SMEs, including those in my constituency, and impeded the circulation of information and caused the operational cost to rise. The provisions which are originally meant to combat the anti-competitive conduct of major enterprises have degenerated into tools for laying traps for the SMEs. Lastly, President, I wish to say that while the speeches made by Dr Margaret NG and Ms Audrey EU earlier on seem to be targeting Ms Regina IP, frankly speaking, I do not see that this law will do any good to my sector but on the contrary, it will bring a lot of benefits to the legal profession, because when someone wishes to seek an explanation of legal provisions or when there are disputes and the parties concerned sue each other, they must hire a lawyer. Those who are accused and those who initiate the proceedings must hire a lawyer. In fact, even though they will stand to make gains, they should not be afraid of admitting it. This is no big deal. I always speak for my sector and I have been attacked, challenged for not performing my duty as a Member properly and questioned for not giving weight to social interests and public interests. I would say that they are important too, just that we have to strike a balance.

Lastly, President, I very much agree that steps be taken to combat the anti-competitive conduct of major enterprises. The Liberal Party has also supported industry-based measures to hunt "big predators" in, say, the

telecommunications industry, and I am supportive of this. However, in my view, this law is the "Article 23" to SMEs.

President, I cannot support this Bill. I so submit.

MR VINCENT FANG (in Cantonese): President, now whenever the Legislative Council is to pass any controversial Bill, what the Government will do before all else is not to examine if the Bill concerned has got any problems which make it fail to get the support of Members, members of the public and the stakeholders concerned. On the contrary, what the Government will do is to count the number of votes in its favour. This has become a habit. If it is found that the number of votes in its hands is not sufficient, then it will make some minor revisions to the Bill. For example, in the Competition Bill which we are to examine today, the number of amendments from the Government totals more than 100. If votes are enough, then the Government will push for the passage of the Bill regardless. This is the case with the political reform package not accepted by Honourable colleagues from the pan-democratic camp; so is the case with this Bill not accepted by those Members from the business sector. Irrespective of whether Members are from the pro-establishment camp or not, they are treated the same way in this Council. Insofar as I am concerned, I have already indicated that I do not support this Bill, including also those amendments from the both the Government and other Members.

Some officials or Honourable colleagues may be puzzled by my stand and they may think that if I am worried about the possibility of SMEs being caught by the Competition Ordinance inadvertently in the future, the Government has raised the relevant thresholds and provided a number of safeguards to the SMEs. Some Honourable colleagues even describe the Bill as a toothless tiger after the Government has proposed more than 100 amendments to it. They do not see why I should oppose the Bill so firmly.

I would like to make it clear in the first place that I oppose this Bill which is introduced to this Council for this last legislative procedures not because I oppose a piece of legislation that would really promote healthy competition, shatter monopolies and put in place for the SMEs or those disadvantaged trades a law on fair competition or an anti-monopoly law that would enable these SMEs

and trades to survive in the market. This Bill which is introduced to this Council today has basically deviated from its original legislative intent and it has been altered beyond recognition.

Please allow me to ask a simple question. Why does Hong Kong need to enact a law on competition? Is it because there are some 160 countries in the world which have got a similar law on competition? Is it because of this that we do not want to lag behind and hence enact this law because we do not want to look different from others? Or is it because there are no conditions in our economy and the market which are conducive to competition?

According to papers from the Government, the government policy on competition seeks to enhance economic efficiency and promote market economy through promoting sustainable competition, thereby bringing benefits to both the business sector and consumers. However, the Bill now introduced as I see it is exactly running counter to these three objectives. It will make the situation of Hong Kong go from bad to worse.

In respect of promoting sustainable competition, I think Members will remember a news story which is about Hong Kong topping the global competitiveness report 2012 again as published by the International Institute for Management Development at Lausanne, Switzerland. Would Members please note that it is not the first time that Hong Kong finds its way into the chart, but it is topping it again. However, when this report was published last year, a note was added to this effect: the impact of the Competition Ordinance after it has come into force has not been taken account of. From this we know that even an international economic research institute would think that after the competition law is enacted in Hong Kong, it is likely that Hong Kong's competitiveness will be affected.

What is more ironic is that though there are some 160 countries in the world which have enacted a competition law, their competitiveness has not been enhanced in any way as a result. On the contrary, Hong Kong which does not have any competition law is rated as the most competitive economy in the world. Should the SAR Government not look into why Hong Kong can become the most competitive entity and strive to maintain this ranking that we can be proud of? It is most unfortunate that the SAR Government does not treasure this international ranking which is not easy to come by. It has on the other hand

tried to imitate other places and sought to enact a law on competition in order to be on the same par as others. I am sure these international institutes would come to a view in the end.

With respect to the promotion of free trade, another international economic rating organization, the Heritage Foundation of the United States, has rated Hong Kong as the freest economy in the world for 18 years in a row. Likewise, the SAR Government does not value this rating.

As to the question of whether this law can benefit the business sector and consumers, I have even greater doubts. In the course of scrutinizing and enacting the Bill, both the Government and its supporters always stressed that the ultimate aim of formulating this piece of legislation on competition was to advance the benefit of consumers. This is like the section heading before paragraph 13 in the report of the Bills Committee which is entitled "safeguarding consumer benefit as an object of the Bill". This is why the Bill targets four types of conduct, namely, price-fixing, market allocation, output control and bid-rigging. But I must ask Members here — though there are not many now — under what circumstances will the consumers benefit the most? When there is vicious competition in the market or when there is cut-throat competition, the consumers will certainly be able to buy things cheap and reap the greatest benefit.

But cut-throat competition is no different from suicide. Normally, it is only under three kinds of conditions will an enterprise decide to slash prices in a cut-throat manner. The first is to clear the stocks. The second is to cash in before closing down. And the third is when enterprises of great financial strength resort to this in order to harm other enterprises which do not have such a great amount of capital, thus driving them out of the market. As competitors get fewer, or when monopolization emerges, these big enterprises can take control of the market and prices in any way they like and so the loss incurred by price cuts can all be recouped.

Some Honourable colleagues may think that we need to legislate to prevent such a state of affairs from happening. But we should know that the survival of these small companies in such fierce competition hinges on working through these so-called alliances of small enterprises to make themselves more competitive. Examples are those shops belonging to the same chamber of

commerce, all the cafes in a housing estate, all the butchers in a market, and so on. These people may join hands to lower the prices or increase them in order to avoid vicious competition, thus enabling everyone to make some profits. If this Bill is passed today, this kind of conduct will constitute the most serious offence among the four kinds of conduct stipulated in the Bill, that is, price-fixing.

When all the retail outlets of a giant consortium or chain adjust the prices under notice from the head office, provided that the consumers will benefit, this should not be regarded as price-fixing. A similar incident happened a few months ago. The fresh meat stall owners complained about a certain chain store which offered concessionary prices for fresh meat which were even lower than the actual costs. The business of those meat stalls in the markets slumped as a result. It can be seen from this example that if price cuts by a chain store can benefit the consumers, then it is not a breach of the competition law. And the decision so made by the head office of the chain does not constitute price-fixing in any way. Likewise, there is no breach of the competition law. A large chain store would sell tens of thousand kinds of goods and it may offer some items at prices below cost to attract customers. As consumers also buy other kinds of goods, this can offset the losses incurred by the price cuts. This is a very common gimmick in business operation.

What if the players change their roles? Those meat stalls in a market may want to resist the chain stores and so they join hands to increase or reduce the prices in order to prevent the emergence of a vicious cycle. Will this work? We know that this will constitute price-fixing. Will the Bill promote beneficial competition or vicious competition? Will it lead to business flourishing in all trades or a monopolization? Honourable colleagues supportive of the Bill always stress that the Bill is considered effective when it brings benefits to the consumers. But would consumers benefit or they are simply at the mercy of others when there are just a few giant consortia doing business in our society? I therefore think that this legislative intent of "thereby bringing benefits to both the business sector and consumers" espoused by the Government cannot be put into practice at all.

The business sector greatly supports the continued upholding of free economy in Hong Kong. However, we know that there can never be any fair competition when companies do not run at the same starting point. Those

enterprises with strong financial capabilities can have a one-stop operation from production to retail and they enjoy an absolute advantage in terms of both vertical and horizontal competition. Therefore, the SMEs hope that an anti-monopoly law can be enacted. Unfortunately this Bill has lost its original legislative intent. It has turned into a trivial piece of legislation, one that can only target the small companies instead of the big ones.

President, my position is crystal clear, and that is, I oppose this Bill. This law which is supposed to target business operation does not command the support of the business sector. It does not have the support of those giant consortia which I have mentioned as well. These consortia do not accept and endorse it. Unfortunately, the Government is still bent on having its own way and it wants to force it through, implement it and pass it into law. Just who should be the masters of our economy? The Government, the consumers, or who? I cannot figure that out. Why does the Government want to enact this piece of legislation which is full of demerits instead of merits? Forgive me for this harsh remark, I am worried that those international rating institutions would lower our rankings in competitiveness and economic freedom very soon. By that time, if I am still a Member of this Council, I will urge the Government to hold itself accountable. The sad thing is when that time comes, Hong Kong would have paid a heavy price already in terms of its competitiveness.

With these remarks, President, I hope that Honourable colleagues can think twice and oppose this Bill.

MR CHAN KAM-LAM (in Cantonese): President, after hearing three speeches made in succession by friends from the business sector on the enactment of a competition law and which all show a doubtful and even opposing stand, I would say that this is totally understandable. As a matter of fact, as some Members said earlier, it was back in 1993 that there was a demand for the enactment of a competition law and at that time the Consumer Council made strenuous efforts to press for the enactment of a competition law.

We can see for many years the oil companies have engaged in continued monopolization. They raise prices quickly while lowering prices very slowly. The monopolization in the telecommunications industry is also very serious. In

recent years, we can also find that in the financial industry and the supermarkets trade, there is this bullying of the small companies by the large companies. Members of the public have very strong views about these trades. They urge the Government to pass some laws to regulate the trades concerned and restore order in the market. We can see that the Government has made some efforts and we cannot say that it has done nothing. In the telecommunications industry in particular, the Government has undertaken some studies and taken some actions more than a decade ago, putting in place a good regulatory regime in the industry. But with respect to the oil companies, the supermarkets and even the financial industry, we can see that the Government is powerless in terms of regulation. Therefore, many people in the markets concerned and even people from all sectors across the community are very unhappy about this state of affairs.

We all know that the regulation of specific trades and industries is more effective than imposing cross-sector regulation. In the past we could see that work in this respect was not that bad. So all along we have been pressing the Government to impose some sort of trade-specific regulation instead of some broad and cross-sector kind of regulation. In the economy of Hong Kong, we can see that ……

(Mr Albert CHAN stood up)

PRESIDENT (in Cantonese): Mr CHAN Kam-lam, please hold on. Mr Albert CHAN, what is your point?

MR ALBERT CHAN (in Cantonese): I think I have to interrupt Mr CHAN Kam-lam's speech. It is because I hope that more people can hear what he is saying. President, I request a headcount.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

PRESIDENT (in Cantonese): Mr CHAN Kam-lam, please continue.

MR CHAN KAM-LAM (in Cantonese): President, since monopolization or conduct which aims at suppressing the business operation of other companies has emerged in the oil industry, the telecommunications industry, the financial industry, the supermarkets, and so on, there is a very strong demand in society for the enactment of some laws to address the situation and regulate these trades.

We have maintained a close dialogue with the Government over the years. We hope that the Government can enact some laws to regulate the markets concerned. When we learnt that the Government was to introduce a cross-sector law on competition, we put forward many views. In our opinion, this law may not be able to regulate the markets concerned in accordance with the actual business environment in Hong Kong. This is especially the case with addressing the monopolization which has appeared or is about to appear as a result of the conduct of some large enterprises.

Hong Kong as an economic entity always upholds freedom and all along the business environment here is conducive to the entry of all sorts of companies. We welcome investors to come here regardless of their size. We also encourage local investors to compete freely in a level playing field and try their best to develop their business. In fact, for many years there has been no dominance or monopolization in the market as a whole, but only in a number of specific market segments.

So with respect to the present situation, we cannot see that this competition law can clamp down on those big tigers. That Hong Kong has been for many years rated as the freest market in the world can be attributed to the fact that we do not have any competition law which exerts excessive control on the market or interferes with it. We notice that there are two major characteristics in the Hong Kong economy. The first is that the four pillar industries are basically service industries and the second is that the chief players in our economy are the SMEs. So if we are to enact a competition law, our targets of regulation are probably those large enterprises or some trades other than these four pillar industries.

What then is our major aim now? We all hope that the competition law can assure the freedom of competition in the market and ensure the existence of a level playing field. In addition, it should enable consumers to have more choices in the market and a spending environment of quality and affordable goods should appear because of the existence of competition. Besides, we should assure the existence of a free market in Hong Kong which is competitive. If the competition law we are going to pass cannot achieve these three main objectives, then it is not a law.

We know that the SMEs are a disadvantaged group in the market and there is a great gap between their market share and that enjoyed by the major operators. So we would think that a competition law should ensure some room of survival for these SMEs and to a certain extent, we should even afford them more opportunities of development.

President, we can see that the present situation is that the large enterprises have the financial strength and power and they dominate the market and take up a significant share of it. Under the competition law to be enacted, provided that these large enterprises do not do anything wrong and do not use their market power to oppress the SMEs, then they can still enjoy their dominance and market power. And if what they do is not unlawful, they can still exert a significant influence on the SMEs and consumers. We therefore think that while we should ensure that there is a fair room for survival, we should also have competition in the market in order to enable the SMEs to stay in business and enjoy freedom from oppression or even deprivation of their room of survival as a result of any market conduct.

Actually, we think that the competition law should aim at cracking down on monopolistic and anti-competitive conduct. We support the measures proposed in the competition law to target anti-competitive conduct like bid-rigging and price-fixing by the giant consortia. But if these kinds of conduct are found among the SMEs, we would think that they should be tolerated. So we would think that it is acceptable if the Government can add some clauses to the competition law to exclude SMEs.

As we can see in the market activities now, there is still a great gap between the SMEs and the large enterprises. The most important thing is that while the SMEs number most in the market and despite the small number of these large enterprises, the market dominance enjoyed by the latter is obvious. There are some enterprises which after developing some large-scale real estates will also make inroads into telecommunications, cleaning and security service sectors. They play on their cross-sector advantages and use subsidiaries as their major service providers, resulting in the small property owners or consumers finding very few options when they are to choose service providers. So we think that this sort of conduct should be regulated in order to give more options to consumers, such that they can then choose quality and affordable services.

President, we hope that this competition law can be subject to regular reviews and amendments in the light of changes in the market. In the course of scrutinizing the law, we have hoped that efforts can be made to alleviate the concerns expressed by the SMEs and certain trades. We have cited many examples and as Members will probably know, a case is about those undertakings which make reeds for use in tying up articles. There are very few of these undertakings in the market and it may well be said that there are just a handful of them. So there is some sort of oligarchy and significant slices of the market are carved by these operators. But the fact is that these undertakings are SMEs of a tiny size and they can even be called micro enterprises. I think our competition law should not target this sort of trade or individual proprietors. Those trades which have a small market share or are less active should not be regulated by the law or subject to excessive intervention which affects in turn their room of survival.

We think that the Government should put in more efforts in occasioning assistance in the market. All along the Government has upheld this philosophy of governance called "big market, small government", without doing anything to assist the SMEs. We think that if work is done to assist SMEs and regulate the market by way of a competition law, then attention should be paid to this sort of situation.

During the deliberations on the Bill, we have paid great attention to the issue of the room of survival of the enterprises. Mr Fred LI has pointed out that

when some small firms and shops sold their goods, they were threatened by the large enterprises in terms of the supply of goods. We consider that the SMEs are often subject to unfair competition or the impact of unfair market shares as they face competition in the market. So we should put in more efforts to protect the SMEs and ensure that they can have more choices in the market.

We can also see that when SMEs face regulatory efforts, what they will do is to make joint purchases and they may even fix prices in a limited sense to protect their own interest. This will enable them to fight for more room of market development and make marginal profits. In our opinion, such acts should not be subject to the competition law.

President, many Honourable colleagues have pointed out that there are many imperfections with this law, and this we agree. In this society, a competition law is indeed a law aimed at regulation and it should proceed slowly. So we hope that the Government can undertake a full-scale review of the competition law after some time so that in terms of market regulation *(The buzzer sounded)*, it can achieve these three aims and become a good piece of law.

Thank you, President.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): President, in the blink of an eye, we have been demanding the enactment of a competition law for more than two decades. Quite a number of political parties have urged the Government to formulate a fair competition law or anti-monopoly law promptly since the direct election of the Legislative Council in 1991. Now, this Bill can be described as a belated spring. However, this so-called spring is actually no different from a bitter winter. It remains as freezing cold as a bitter winter albeit in the spring season.

President, this Bill is no more than a damp squib, or there is a lack of thoroughness on the part of the Government. The initial idea put forward has

still got some "teeth". But in the end, the Bill cannot be described as a toothless tiger because even a toothless tiger will put on a fierce appearance. The Bill is even worse than a paper tiger.

Let us take a look at the ideas of the Bill as a whole. First of all, the first conduct rule and the second conduct rule are formulated to specify some regulations. An independent commission will be set up to enforce the ordinance and regulations. In respect of penalties, basically, only fines will be imposed. Certainly, criminal sanctions will be imposed in respect of relatively serious offences such as failure to comply with a court order to disqualify a person from being a director, obstruction of search, destroying documents or providing false documents. However, as for other anti-competitive activities such as price-fixing, basically, no criminal penalties will be imposed. Under the competition laws enacted in other countries such as the United Kingdom and the United States which are considered to be the advanced, democratic and free economic zones in Europe and America, much more severe criminal penalties are imposed on monopolistic and anti-competitive activities. So, this Bill, which is the final version of the legislation formulated by the Government tabled before this Council today after deliberation by the Bills Committee, will basically have no deterrent effect at all, particularly to some large consortia.

On economic issues, I seldom concur with the views of the Liberal Party. But Ms Miriam LAU's criticism of the Bill is similar to my analysis. Certainly, I was very surprised to hear her say that the Liberal Party would render its support to the Bill if the Bill could monitor large consortia. I wonder whether the Liberal Party has made a U-turn because large consortia have recently rendered support to LEUNG Chun-ying rather than the Liberal Party. Hence, on economic policies, the Liberal Party maintains that the authorities should ensure that the Bill will cover large consortia. Such a remark has never been heard from the Liberal Party before.

President, competition law or anti-trust law should adhere to some important principles. Over the years, real estate hegemony and financial hegemony have been criticized most harshly in Hong Kong. Such hegemony has grown and extended its monopolization to supermarkets and shopping malls,

as well as energy and household goods. Such hegemony has gradually stretched to each and every sector. Sometimes, it is the subsidiary of a consortium which has gained control of some industries, such as container terminals and transportation. Thus, monopolistic activities subject to this Bill can be said to be negligible.

Given such negligible regulation, it is most disappointing that exemptions are granted to some economic acts of the Government, including functions of the Hong Kong Trade Development Council at exhibition centres and projects of the Urban Renewal Authority. Such exemption will lead to a lack of monitoring on the governance of the Government. The sale of public assets to The Link REIT is a most conspicuous example. If a sound and effective fair competition law covering government conduct was in force years ago, the sale of public assets to The Link REIT or privatization of public assets would have been prohibited by invocation of the law. It is because privatization of public assets is undoubtedly an economic activity which will, to a certain extent, constitute a monopolistic situation.

I have criticized on many occasions in this Chamber over the past few years that there are only two principal landlords in Tin Shui Wai. In the past, they were the Hong Kong Housing Authority (HA) and the Hutchison Whampoa and Cheung Kong Holdings. Now, they are The Link REIT and the Hutchison Whampoa and Cheung Kong Holdings. All the daily needs of the 300 000 residents there are controlled by these two landlords. Years ago, I suggested that a market be built in Tin Shui Wai to prevent at least monopolistic operation of the market by these two big consortia which set prices with reference to each another, thus leading to a situation where residents are forced to buy expensive goods. At present, stalls in the markets of Tin Shui Wai are sublet to individual tenants through the contractors of The Link REIT. As a result, the monthly rent of even a bean curd stall is more than $10,000. Eventually, it is inevitable that the prices of goods have to surge and people are forced to pay a high price for their daily necessities.

President, I request a headcount.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

PRESIDENT (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): President, as I mentioned earlier, the current Bill is basically "toothless", and in terms of consumer protection …… President, I hope Members will respect the Legislative Council and refrain from talking on the phone in the Legislative Council Chamber. It is really a nuisance.

President, the relevant legislation should seek to protect the people's livelihood. As the object of the legislation has been specified as ensuring fair competition, fair competition must respond to market operation so as to provide protection to consumers. And such protection is most crucial to the public. Let us take a look at the plight of Hong Kong people. Apart from the total manipulation by real estate hegemony and financial hegemony in this aspect, the Government is another hegemonist which has control over various sectors.

The Government has mentioned time and again that it adheres to the principle of "small government, big market". But in some areas, the Government is another overlord which manipulates some markets at the expense of the interests of the public or consumers. Take the MTR Corporation Limited (MTRCL) as an example. It is subject to the manipulation of the Government in terms of policies, resources, legislation and shareholding with the purpose of making exorbitant profit. The MTRCL has proposed a fare increase despite a profit of more than $10 billion. It has snatched the hard-earned money of the people through various channels.

On the other hand, the people are pained by the fees and charges of banks. We can see collusion in many aspects. When a company has imposed a fee on

its customers, another company will follow suit. As a result, the public have no choice. Electricity tariff is one of these examples. Once a tariff increase has been proposed, CLP Power and the Hongkong Electric Co. will act in concert with each other. The same applies to the rents of shopping malls. As a result, the people are forced to buy expensive goods while the SMEs will gradually close down.

The current phenomenon is the impoverishment of the middle class. Owing to the manipulation by hegemonists, the number of middle-class people and their levels of income are gradually dwindling. It is said that the class structure in the past was in the shape of a bowling pin. But it has gradually evolved into the shape of an inverted pyramid. Under the money-dominated manipulation, the assets and resources controlled by the hegemonists at the upper strata have inflated in all directions. The amount of assets and resources under their control is expanding at an alarming rate and on an outrageous scale. However, the Government has not implemented any specific policy to deal with the problem. In the past, the presence of the HA could counterbalance the real estate hegemony. But after the sale of assets to The Link REIT, such check and balance has completely gone.

Apart from the large-scale economic activities, all daily necessities such as food and beverages or other daily items such as shampoo, are manipulated by two or three agents or contractors. Basically, after joining hands with supermarkets and several large companies, they can manipulate the market by means of pricing. As a result, the public have no choice and are forced to patronize a handful of shops and pay high prices.

Food is another problem. In the past, only licensed rice traders were allowed to sell rice in Hong Kong. Thus, people had to buy expensive rice in a monopolized market. With the relaxation of the licences of rice traders, rice can be imported from all over the world, leading to a plunge in rice prices. However, insofar as meat and vegetables are concerned, these are also controlled by a handful of companies, particularly pork and beef. These companies are well-known to us. The people have no choice because prices are set by them.

The prices of chickens have risen substantially since the "culling of chickens" and abolition of chicken farms by Secretary Dr York CHOW and the

market is supplied with imported chilled chicken and fresh chicken. Such an increase in price is due to government policy, and secondly, a lack of competition. Because of the government policy, some suppliers have taken advantage of the opportunity to manipulate prices. As a result, the people are forced to buy expensive goods. From this series of situations and phenomena, we can see clearly that the Government has no sincerity in protecting consumers to ensure that they can buy goods at reasonable prices, as reflected by its policies and conducts.

Evident in the public policies and conduct of the Government mentioned by me just now, the Government has a vested interest in certain aspects. Therefore, it can reap significant benefits. For instance, owing to its control of the MTRCL, the Government can share billions of dollars from its profits and fare increases. While the Government coffers are swelling, the high-ranking officials have also enhanced their prestige. They will boast of the achievements of the Government in their speeches in foreign countries. This is precisely the attitude of those high-ranking officials who seek to demonstrate their own achievements. They have notched up their personal success at the expense of the masses. In order to enjoy tremendous popularity, they turn a blind eye to the plights of the people or even issues concerning their life and death. Urban renewal is another example. Certainly, the Government has formulated a basic policy in this regard. However, in order to comply with the so-called prudent commercial principles of the Urban Renewal Authority in terms of administration and requirements of the Financial Secretary, as well as to meet the objective of reaping profits from a development project, they have completely ignored the residents' passion and collective memory in a place where they have lived for a long time. The meaning of development has been totally distorted.

Therefore, you can name plenty of economic activities of the Government which are biased in favour of the tycoons. Some government officials, including our Chief Executive, have made personal gains from these tycoons. Some have even engaged in corruption of serious magnitude. Therefore, this series of incidents are linked with each other. The high-ranking officials would make eyes at the consortia and accept advantages from them. Furthermore, these officials will also work for large consortia after retirement on an annual salary of millions of dollars, while receiving pensions paid by the taxpayers. The fact that they can transfer benefits to each other and provide shielding to each other is a

structural problem. Therefore, the People Power finds it difficult to support this Bill although we have fought for this cause in the past 20 years. I have fought for the enactment of a fair competition law for 20 years, which is supposed to be a reasonable piece of legislation. However, the legislation before us now is worse than a paper tiger.

If you accept the proposals of the Bill, it is tantamount to affording connivance, laxity, acquiescence and tolerance to the continuous monopolization by large consortia in their exploitation of the rights of the masses. It is tantamount to tolerating a situation where the people are suffering hardships. The people are deprived of their rights and forced to buy expensive goods because of the hegemonists' manipulation. However, the people are unable to contend with the hegemonists and their manipulation. This will never be the stance of the People Power. Let us look at the Consumer Council's criticisms and recommendations, including its doubt about whether the Competition Commission has sufficient regulatory capacity; they bear further testimony to the notion that we will not suffer any loss by throwing this Bill into the waste bin. Therefore, on the basis of a series of analysis and justifications, we will not support the Second Reading of the Bill in order to express our dissatisfaction with it.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR WONG YUK-MAN (in Cantonese): President, there are just a handful of Members in this Chamber when such an important Bill is passing the Committee stage in the Legislative Council. It does not matter that some Members are not present, but I hope they can get well prepared for their speeches. The Secretary is pleased to sit here and certainly hopes that the Bill can be the Third time and be passed today. It seems that there is such an opportunity. At the joint debate in the Committee stage, each Member can speak more than once, but it seems that they are not at all interested.

The legislation really covers a lot of areas. At least, it is directly related to people's livelihood. The term "people's livelihood" means the lives of people, the citizens' livelihood and the survival of a society. Although this is such an important Bill, which has been repeatedly discussed by the Bills Committee over

a long period of time and will go through the Second Reading in the Legislative Council today, there are just a handful of Members who wish to speak in this Chamber. So, Secretary, you can rest assured. Originally, I thought that the discussion on this Bill would, in any case, be extended to next Wednesday, taking up one more Council meeting. As there are a pile of Bills waiting for Second Reading or examination, the restructuring proposal of having "five Secretaries of Departments and 14 Directors of Bureaux" will have to call it a day. However, buddy, you may lose your job as Secretary. As you wish to stay in office, you certainly hope that the Bill will be passed expeditiously and smoothly.

However, "the devil is in the details". I am a member of the Bills Committee, which comprised many members when it was first established. A lot of Members from various political parties had joined it, doing it a huge favour. But the number of members attending the meetings then started to decrease. At the later stage, we had to do a headcount every time, just like Mr Albert CHAN who requested a headcount earlier. I must point this out to the public and tell them that such an important Bill has come to a hasty end. Concerning the Government's amendments, we have to point out that many are appropriate amendments in response to different views. If I want to sing praises of the Government, I would say that the Government is ready to accept advice. From a neutral point of view, the Government has no alternative, or else many people will oppose the Bill. The Liberal Party is the best example. In the end, the three Members of the Party have implied that they will vote against it. As for friends from the business sectors or those who represent the business sector, why did they not say anything? What are the reasons for them to remain silent?

As this is such an important Bill, the Secretary is naturally very concerned about it. Having worked as a Member of this Council for so many years, I have never seen so many "paparazzi". Buddy, each one of them is highly educated. Even the one with the lowest qualification is a graduate from the University of Hong Kong. But you have assigned them to be gatekeepers to jot down "Mr WONG Yuk-man is back, Mr CHAN Kam-lam has just left". All entrances here are manned. Is this crazy? President, when did the Legislative Council turn into a venue under the surveillance of the Government's secret police? This is really outrageous. Are we primary school or kindergarten students? I have checked that each exit is guarded. The car park is no exception. What a scene! I have even decided to instruct my assistants to take photographs of each one of them.

Being employed, the Administrative Officers have no choice. But even Administrative Officers have to undertake such duty, is it because there is no other staff in the office? President, there are so-called "paparazzi" at each entrance who will write down "Mr LEUNG Kwok-hung is back. Today he is back for the first time because he has to go to court"; or "Mr Albert CHAN is back, and Mr WONG Yuk-man is back again after going out for a while". Gregory SO, what are you doing? Is it necessary to assign so many people to watch over at the entrances?

Surely, the Bill will be passed as the Democratic Party, the Civic Party and the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) will all support it. What are you afraid of? I can do nothing except telling you that I am not filibustering. Do not fear on hearing the word filibustering. I have prepared such a pile of speaking notes, which contain all the controversial information since the beginning of the scrutiny of the Bill. I have compiled this as materials for my four-hour speech. I might as well tell you that I have planned to speak for 16 sessions at 15 minutes each at the Committee stage. This is not filibustering as my speeches are full of substance. President, even you cannot stop me because I am well-versed in the Bill.

But I hope those who think that the restructuring proposal of having "five Secretaries of Departments and 14 Directors of Bureaux" should not be launched in a hasty manner will make use of every opportunity to speak in the Committee stage. In that case, LEUNG Chun-ying can take a break and the structure of "three Secretaries of Departments and 12 Directors of Bureaux" will remain intact. Secretary, you will continue to serve as the Secretary for Commerce and Economic Development because the Bureau will not be restructured into the Technology and Communications Bureau although you do not know why and you are not privy to the details. Matters concerning technology and communications are originally your brief …… a bit off the subject ……

PRESIDENT (in Cantonese): Mr WONG, you have strayed from the question.

MR WONG YUK-MAN (in Cantonese): President, the Hong Kong community is filled with all kinds of hegemony. In the Bill, an economic hegemonist is

called an undertaking. These undertakings will take advantage of their market dominance to manipulate the market either on their own or in partnership with other undertakings. They will engage in various anti-competitive activities. As a result, consumers and small shop operators will be subject to exploitation. In the past, these activities might be confined to a certain level of economic activity. The public might not feel it or considered it as a matter of course because business is business, and after all, ours is a capitalistic free market.

However, this situation has deteriorated markedly in recent years. Some undertakings or economic hegemonists have engaged in anti-competitive conduct in a more blatant manner. They take from consumers whatever they please. During the six months in which the Bill was under scrutiny by the Bills Committee, the media had extensively and continuously reported cases of suspected anti-competitive conduct which have existed for a long time. Some of these cases are even more serious. For instance, large supermarkets have made use of their market dominance to force suppliers to set prices of goods, or adopted various means to exclude competitors in the market. Such activities are outrageous indeed.

The emergence of The Link REIT has intensified these problems. Years ago, the Democratic Party supported the listing of the The Link REIT; the DAB supported the listing of The Link REIT; the Hong Kong Federation of Trade Unions also supported the listing of The Link REIT. After the listing of The Link REIT, the adverse impact on the people's livelihood was obvious to all. However, these shameless politicians dared to come forward to help small shop tenants operating in shopping centres under The Link REIT to stage demonstrations in these shopping centres. Hoisting placards, they protested against The Link REIT as a ritual. They are really shameless. The initiators are the politicians who supported the listing of The Link REIT. But today, they plead for the small shop tenants who have suffered oppression by The Link REIT.

After The Link REIT has brought anti-competitive conduct into the public housing estates, small shop tenants are gradually replaced by chain stores of large consortia. Although shopping centres of public housing estates have got a facelift on a huge budget of renovation, what people can find are shops of uniform style such as Wellcome Supermarket, Park'n Shop Supermarket, McDonald's, Maxim, Fairwood and Café de Coral. It does not matter even

though I read out their names. Do we have any choice? What we can get are only junk food or food made in food factories. In the past, I had tasted various delicacies in public housing estates. For instance, I had tasted the best milk tea in a shop in So Uk Estate, which, however, was forced to move out. It was a most delicious cup of milk tea I ever tasted and it was made by a small family-style restaurant. The whole family had been supporting each other for almost 20 years in that shop which saw its fate of winding up.

As residents can only find shops of uniform style in these shopping centres, they have no choice but patronize shops run by large consortia. But these are public housing estates, Secretary. Do you have any measures to deal with it? After the passage of the Competition Bill, these shops will not be affected at all. Under The Link REIT, there are 180 shopping centers and parking facilities, which are essential facilities affecting the living of more than 2 million public housing residents. Such a monopolistic situation in public housing estates is bound to spread to other parts of the community. Other regional monopolization will gradually turn into monopolization of the Hong Kong economy and the ultimate victim is the general public. Here is a case ……

(Mr WONG Kwok-hing stood up)

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, what is your point?

MR WONG KWOK-HING (in Cantonese): President, a point of order. I would like to clarify that the Hong Kong Federation of Trade Unions did not support the listing of The Link REIT.

PRESIDENT (in Cantonese): Mr WONG, this is not a point of order.

(Mr LEUNG Kwok-hung stood up)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, what is your point?

MR LEUNG KWOK-HUNG (in Cantonese): I would rather not tell you.

PRESIDENT (in Cantonese): What?

MR LEUNG KWOK-HUNG (in Cantonese): Did you not hear what I said?

PRESIDENT (in Cantonese): Mr LEUNG, what is your point?

(Mr WONG Yuk-man stood up)

MR WONG YUK-MAN (in Cantonese): A point of order. I request a headcount.

(Mr WONG Kwok-hing stood up)

MR WONG KWOK-HING (in Cantonese): President, how would you deal with my point of order?

PRESIDENT (in Cantonese): What you have raised is not a point of order.

MR WONG YUK-MAN (in Cantonese): If you are not well-versed in the Rules of Procedure, you should read the provisions carefully. You may make a clarification when you have the opportunity to speak, buddy, this is not a point of order. Take a good look at the Rules of Procedure, Mr WONG Kwok-hing.

PRESIDENT (in Cantonese): Mr WONG, you are not delivering your speech, please sit down.

Mr WONG Kwok-hing, if you think that a Member has violated a provision of the Rules of Procedure, you may point it out. But it is not a point of order if you disagree with what a Member said in his speech.

MR WONG KWOK-HING (in Cantonese): Can I make a clarification after he has finished with his speech?

PRESIDENT (in Cantonese): If you think that the speech of a Member is not fair to the FTU, you may tell other Members of the FTU to respond in their speeches. As you have already spoken, you do not have the opportunity to respond. Please sit down.

Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

PRESIDENT (in Cantonese): Mr WONG Yuk-man, please continue.

MR WONG YUK-MAN (in Cantonese): The "big sister" of the FTU, CHAN Yuen-han, is a member of the DAB. Mr WONG Kwok-hing, you may as well check how many members of the FTU are also members of the DAB. To claim that the DAB supported the listing of The Link REIT is tantamount to saying that the FTU supported the listing of The Link REIT. In fact, this cannot be considered a misrepresentation, not to mention the fact that this is not a point of order but in spite of this, you barged in. I had been talking excitedly for 10 minutes but you made it a point to disrupt me, so I had no choice but to ask for a headcount. Well, let me continue. However, I have only covered half of the matters found on this page and this is really a big problem.

Just now, I talked about The Link REIT and now, there is a duplicate of The Link REIT. On the FTU and the DAB, I have to talk about the fact that in

the past, when betting on a "Tse Fa" lottery, a substitute could be arranged. Has the President ever heard of this? People who are older all know about this, but when I talked about this with those young reporters, all of them knew nothing about this. For example, there is a figure standing for number 36 and it has another substitute, maybe number 19 ……

PRESIDENT (in Cantonese): Mr WONG, you have strayed from the question.

MR WONG YUK-MAN (in Cantonese): …… so long as one had placed a bet on the winning substitute, one was also considered to have won the prize. Therefore, people in the DAB and the FTU are the substitutes in a "Tse Fa" lottery, and there are 36 ancient figures. Don't you retort!

In the absence of a level playing field, the international rating of Hong Kong's business environment will also be affected. How can a market full of monopolization be considered an ideal business environment with economic freedom? Anyone who has read the news reports in the last couple of days would feel indignant. I am now considering whether or not to get in touch with my lawyer over an application for a judicial review. It turned out The Wharf (Holdings) Limited has been granted a tenancy spanning 21 years at a cost of $7.9 billion. The cheapest monthly rent for that area is $500 per sq ft and I also have some good friends who rented some shops in that area who have to pay a monthly rent of $1,000 per sq ft, so the rent is $300,000 in total. Do you mean this can still not be considered collusion between the Government and business? Why can this go so far? I cannot help but think that by all common sense, it can be said that Donald TSANG has become as rotten as he could be and there is only less than a month left in his term, so why did he have to transfer benefits to The Wharf (Holdings) Limited in this way?

If we think further about this, this has probably got nothing to do with him and it is the idea of LEUNG Chun-ying because earlier on, Peter WOO gave his backing to LEUNG Chun-ying, so it is 90% likely that LEUNG Chun-ying exerted pressure on "Old TSANG", threatening to ask the ICAC to deal with him and asking him to transfer $7.9 billion of benefits to The Wharf (Holdings) Limited, so that it can reap inordinate profits for 21 years. I am now considering

whether or not to appoint a lawyer to apply for judicial review, since in any event, recently, I am also seeking judicial review of a matter relating to CHEN Ran and a date has been fixed for its hearing several weeks later. Doing so also has risks because if one loses the lawsuit, one has to pay the costs but still, we have to get this job back for the sake of the permanent residents of Hong Kong, in particular, the young people. Buddy, she has resided in Hong Kong for less than seven years but you are hiring her as a Project Officer. Even though obviously, there is surplus from the election expenditure, he was not willing to dig into his own pocket and seeks to use public funds ……

PRESIDENT (in Cantonese): Mr WONG, please do not stray from the question again.

MR WONG YUK-MAN (in Cantonese): …… so this is another kind of monopolization.

The Competition Bill stops at prohibiting private undertakings from engaging in practices that are damaging market competition but the Administration does not have a set of policies on competition to fully and directly promote effective competition in the market. Almost 20 years ago, that is, 19 years ago in 1993, the National Competition Policy Review Committee of Australia pointed out that an effective competition policy must have the following objectives:

First, to effectively supervise enterprises and prohibit them from adopting anti-competitive practices.

Second, to review and improve existing government regulatory policies that are not conducive to market competition.

Third, to take action on the inappropriate structures and practices of public enterprises.

Fourth, to maintain neutrality and impartiality in dealing with problems arising from competition in public commercial activities and among private enterprises.

Fifth, to combat monopolistic pricing in the market or anti-competitive practices in certain industries resulting from the possession of essential facilities by individual enterprises, and examine how to promote a fairer and more open environment of competition in these industries.

In contrast, our Competition Bill is evidently inadequate. Two decades ago, it was already pointed out in Australia that the issue of unfair competition between public commercial activities and private companies had to be dealt with properly. In this regard, the Bill is lagging far behind. I have to point out that those so-called exemption arrangements for statutory bodies are not consistent with the laws in the European Union and the majority of advanced countries. For this reason, we oppose the exemption for the Trade Development Council and we oppose the exemption for the University of Hong Kong in establishing SPACE, which competes with private institutes for profit, such that it can compete with private universities for students. We oppose this kind of arrangement. I will discuss the exemptions for statutory bodies further in the joint debate to be conducted later on.

This part ends here, but I will wait until the joint debate to voice some of the views that I originally wanted to voice at this stage.

MR LEUNG KWOK-HUNG (in Cantonese): President, just now, Mr WONG Kwok-hing was furious and by raising a point of order, said that the FTU did not support the listing of The Link REIT. Of course, there is nothing wrong about his claim because the listing of The Link REIT was not voted on by this Council in any way. Members were just allowed to discuss it a little and they only had to express their agreement. This is because problems exist in our political system. In addition, even if no support was voiced in the legislature, was it not possible to voice support outside the legislature?

The listing of The Link REIT was a typical example of the collusion between the Government and business. President, I will not stray from the question. The Hong Kong Housing Authority (HA) and Hong Kong Housing Society (HKHS) are statutory bodies established by the British-Hong Kong Government. They were established with the aim of solving Hong Kong people's housing problems. The construction of Home Ownership Scheme units,

public housing and interim housing is undertaken by these two organizations. This being so, what is The Link REIT? It was created by this statutory body called the HA at the behest of the Government to deceive the public and sell assets at dirt cheap prices, so that The Link REIT can be benefited as a result of its listing. Given that the HA could engage in such collusion in the past, there is no guarantee that it would not do so again in the future, is there? As regards the HKHS, it has even deviated from its proper line of business to the extreme.

I do not have a lot of time, so I will talk about The Link REIT first. President, have you visited the website of YouTube? I myself was ……

PRESIDENT (in Cantonese): Mr LEUNG, how are your comments relevant to the Competition Bill?

MR LEUNG KWOK-HUNG (in Cantonese): They are. If people do not understand the Competition Bill, they would be deceived. If the passage of the Competition Bill could prevent the HA from selling its assets at dirt cheap prices and deceiving the mob into besieging "Long Hair" and threatening to kill me and chop off my hands, as it did back then, of course, there would not be any problem. However, the Government did not explain if the Bill would have such an effect, yet the public think that all would be well after the passage of the Bill. If the Bill cannot prevent such statutory bodies as the HA from selling its assets or using its market power in the future …… the market power of the HA is actually a kind of natural monopoly, President, is it not? Wake up! In the past, when Members applied to the HA to rent places to establish Members' offices, the HA would say "sorry" for it had to let the places to District Council members first. Now that the shopping malls are in the hands of The Link REIT, this problem has become even more serious. Even if you want to rent a place, you cannot do so and must bid for it in the market. If you say that the HA is supposed to serve the public, even if I do not talk about other issues, now, even when elected Members want to establish their offices in public housing estates, they are oppressed by The Link REIT, for they do not have enough money to rent a unit.

The HA, with its status as a statutory body, has transferred such a lot of assets, including shopping malls and car parks, to The Link REIT, thus turning

The Link REIT into a cash cow, so do you think this is right? Of course not. Can the Bill stop this sort of thing? No. The HA is still a statutory body, is it not? I believe perhaps it still is! You had no patience to listen to me just now, so you thought that my comments were irrelevant to the Bill. The Link REIT issue has given rise to one problem, that is, since the Government lied or did not tell the whole truth, so the DAB, FTU and the Liberal Party were all deceived by the Government back then. Perhaps the situation today is also a repeat, in that it is all about verbal promises that will not materialize, is it not? Therefore, how can you say that I have strayed from the question? Back then ……

PRESIDENT (in Cantonese): Mr LEUNG, you have strayed from the question. Please focus your comments on the Competition Bill.

MR LEUNG KWOK-HUNG (in Cantonese): How have I strayed from the question? Can you please explain?

PRESIDENT (in Cantonese): Please explain to which clause of the Bill are your comments just now related to?

MR LEUNG KWOK-HUNG (in Cantonese): The Bill exempts some statutory bodies, does it not? Is there any exemption? I do not know. You are the one to make a ruling. Do you think there is or not?

PRESIDENT (in Cantonese): What sort of exemption are you talking about?

MR LEUNG KWOK-HUNG (in Cantonese): Let me give an example. The HA is exempted, in that case, the HA ……

PRESIDENT (in Cantonese): Mr LEUNG, in saying that the Bill grants exemption to statutory bodies, you have not explained clearly from what they are

exempted. Moreover, how is this related to The Link REIT that you talked about just now?

MR LEUNG KWOK-HUNG (in Cantonese): Of course, it is related. The Link REIT has market power but it can say that it has none, or it can claim that its market power is meant to protect public interests, so even though it has violated the first and second conduct rules, it does not have to face prosecution. When all people are afraid of the Competition Commission and the Competition Tribunal, fearing that they may have to spend millions and even tens of millions of dollars on lawsuits, the HA needs not worry about this. You did not ask your fellow party members but only keep asking me. You should question them in this way. Let me tell you, they know nothing and all of them have scripts prepared in advance for them. When they mispronounced some words, you did not correct them either. Are you trying to make a fool of me? If ……

PRESIDENT (in Cantonese): Mr LEUNG, I remind you not to stray from the question anymore. Otherwise, I have to stop you from speaking.

MR LEUNG KWOK-HUNG (in Cantonese): Let me articulate to you word by word that the HA is a statutory body and in October 2004, it deceived Hong Kong people by claiming that it had no income because of the moratorium on the sale of HOS flats, so it had to make money, saying that it had to carry out the largest privatization plan in the world in terms of market value. As a result, Hong Kong people were deceived! That group of former Legislative Council Members who were nitwits were also deceived! Today, the Government has proposed this Bill but falls short of explaining it clearly, so the DAB and other Members are still being deceived. If the Bill is passed, there would even be a law to protect the HA, so that it can be given exemption and in the future, even if we want to take the HA to court, it would be impossible to do so. Do you understand?

You said I had strayed from the question. That day, some people said they wanted to kill me but I did not blame them because stupidity and cunningness are incurable. President, I call on you to consider the case of the HA and think of more examples. The HA is established with the sweat and

blood of Hong Kong people and its assets belong to Hong Kong people, as does its surplus. The HA would make use of its market power resulting from its natural monopoly to sell a lot of assets every now and then and use its market power …… let me give an example. In respect of the shopping malls in public housing estates, the HA possesses market power because no other people own so many shopping malls in public housing estates. The HA can sell the shopping malls at will. It can sell 70% or 100% of them. Is this not market power? Is this not colluding with oneself to fix prices?

President, there is also one ultimate measure. After the HA has sold 70% of its shopping malls and when only 30% is left, the HA can collude with the company owing the 70% of the shopping malls to fix the prices. President, all of you say that I do not care about the living and hardships of the public. Let me use the "dai pai dongs" (cooked food stalls) in Tai Po as an example. In the past, due to the indolence of the District Offices under the British-Hong Kong Administration, stall owners were left to their own devices in settling the allocation of stalls. As a result, stall owners could carry out bid rigging, that is, colluding to fix the bidding prices. In bid rigging, when stall owners bid for stall Number 1, all the stall owners would agree in advance to make a bid of $500 at the most and the bid for stall Number 2 would also be $500 at the most, and so on. As a result, stall owners can collude to rig the bid. In future, such practices may be liable to prosecution but the HA can still have the cake and eat it too by selling our assets. Does the new competition law has any way of dealing with the HA? This is a very big problem, is this not?

Let me talk about another big disgrace to the Legislative Council, namely the problem of the railways. President, railways are a major public utility but again, they are exempted. Moreover, not only are they exempted, they can even enjoy a dominant advantage. Bus routes cannot run parallel to railway lines, so they cannot compete in parallel and as a result, the public must use railways. The Government has built up the market power of railways in the name of environment protection, and then it builds up property developers' power in the real estate market.

Let us look at the history of railway development. The first underground railway in Asia was built in Hong Kong in 1974 and the slogan at that time was "MTR — A Railway For You". We borrowed billions of dollars from the Asian

Development Bank to develop the railways and the poor people had to be relocated to the very remote areas like pioneers due to the construction of railways. The land surrounding the railways and on top of the MTR stations was used to build flats …… so the MTR Corporation and property developers monopolized the market together.

Subsequently, we also developed the Kowloon-Canton Railway (KCR). For some time, the market power of the KCRC was also for some time unparalleled. As regards the West Rail, we all know that a tenant of the Wah Kai Industrial Centre killed himself by jumping off a building because he lost in the lawsuit. That was my junior alumni. He took property developers to court but could not pay the costs. The benefits enjoyed by the two railway corporations were all granted by the Legislative Council, which also approved the merger between the KCRC and the MTR Corporation Limited (MTRCL). The MTRCL even carried out privatization with this in view. This plan was carried out in the name of God and in the name of the Father, with the Government claiming that it was in the interest of Hong Kong people that some of the railways be sold, then saying that it had to bear in mind the interests of small shareholders. When there was no money, just ask the big brother for it, so applications for funds were made to the Legislative Council led by Jasper TSANG.

The MTRCL obviously enjoys a monopolistic position and it was an oligarchy established through the policies formulated and funds provided by the Government. However, we have no way of monitoring the MTRCL, so what can we do? The MTRCL engages in property sales, seizes land forcibly and builds flats but we have no way whatsoever of exercising oversight on all these, nor can we use the competition law to charge it of violating the first conduct rule or second conduct rule because it will be granted exemption. Honourable colleagues in the Legislative Council who do not know what is going on could even believe in the Government. All that they do is to say that nothing can be done because the Government says that the MTRCL should be exempted. The MTRCL is doing so many bad things and in the future, it will still continue to do them but now, we are even going to pass a law to protect it. This is just like getting a rope to hang oneself, *a la* "Ah TSANG". President, I am not talking about you but your clansman, Donald TSANG. The DAB is very smart in giving him a rope and drinking wine together with him, so as to see him off to his

death and let him have another meal, saying that it was meant to requite him. You treat him to a barbecue and I treat him to seafood. Oh, a meeting of dirty minds!

On this problem — President, I surely will not stray from the question — I am targeting at the issue of the railways. The Legislative Council made a mistake before but on this second occasion, it still would not rectify it, so how would this do? Therefore, in my amendment, I point out that at the end of the day, a competition law must be able to benefit consumers. Of course, there are many types of consumers and in the process, there may be 14 types of consumers and the more low-down …… no, it should be lower downstream — sorry, President, I am not talking about you, I mean to say lower downstream rather than "more low-down" — if the consumers lower downstream can be benefited, that would be going in the right direction. If the consumers at the end of the line can be benefited, surely, nothing is amiss. Therefore, if there is no provision that can achieve such an effect, no matter if the law is enacted in the name of the Father or the mother, ultimately, it cannot afford any protection.

I also wish to tell Honourable colleagues like Mr WONG Kwok-hing in the Legislative Council, that you do not have to stand up in a hurry to say that you did not support the listing of The Link REIT. If your affiliated labour unions supported it, it is just the same, is it not? Back then, those people who said they wanted to chop me to death and chop off the hands of "Tai Pan" were all people from the FTU, and they also said that they wanted to glue some hair to the hands, saying that they were "the devil's claws", so can you see how ugly and unsightly that was? That was really to set a bad example for kids. Do you want to apologize to me?

President, I do not need his apology. Mr WONG Kwok-hing, just wake up! You and I do not have any scores to settle, so I am only telling the truth. I wish to tell Honourable colleagues of the two political parties, the DAB and the FTU, that if you have made a mistake, you should admit to it immediately, otherwise, later on, Ms Miriam LAU would say again that even god would not countenance you. Both The Link REIT and the two railway corporations carried out privatization and monopolize the market in the name of the Government and in the name of benefiting the public. As a result, they enabled consortia to make

a lot of money. How can we tolerate such instances under this framework called "statutory bodies"?

President, I am not straying from the question, rather, I want to stray from my seat. I shall stop here.

DR PAN PEY-CHYOU (in Cantonese): President, I only wish to make a brief speech because both Mr WONG Yuk-man and Mr LEUNG Kwok-hung mentioned the FTU in their speeches just now, saying that the FTU supported the listing of The Link REIT. I certainly understand that they made these smearing statements probably because of the upcoming election. But I think that whatever their purpose, they should do everything aboveboard, and their speeches should be based on facts.

Hence, members of the FTU have asked me to clarify this matter. First of all, the FTU has never supported the listing of The Link REIT, and this Council also has a clear record. The only vote on the listing of The Link REIT was taken in this Council on 1 June 2005 when Mr Albert CHAN proposed a motion calling for the shelving of privatization. In fact, his motion was targeted not only at The Link REIT, for it was used as an example to illustrate his concern that a series of privatization plans by the Government would affect people's livelihood, such as aggravating the wealth gap. The voting result of this motion, proposed as a non-binding Member's motion at that time, was very clear. Three Members from the FTU, including Miss CHAN Yuen-han, Mr WONG Kwok-hing and Mr KWONG Chi-kin, voted in favour of the motion.

It is unfair for the voting preference of the DAB to be forcibly imposed on Members from the FTU on the grounds that individual members of the FTU were once members of the DAB, because it is very clear that our voting preference is different when it comes to certain livelihood issues. According to such logic, can the voting preference of the Democratic Party be imposed on Mr Albert CHAN given that he once was a member of the Democratic Party? Hence, I would like to clarify this logic to set the record straight.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR LEE CHEUK-YAN (in Cantonese): I have no idea for how long the Bill today has been delayed. In my personal opinion, it should be close to 20 to 30 years. President, the actual purpose of enacting a law on anti-competitive activities today is to prevent the market from being monopolized. But, worst of all, a competition law is not enacted until today when monopolization has already taken shape. Hence, it has indeed come too late.

The monopolistic groups in Hong Kong can be described as hegemonic or demonic. Such being the case, even the Secretary cannot deny that although a competition law may restrict some acts, it can do nothing in essence in changing the monopolies, because those groups are so large that they can simply not be dismantled. It is absolutely impossible to ameliorate the severe monopolization or oppose hegemony by relying solely on a competition law.

Despite the eagerness of the Labour Party to oppose real estate hegemony, financial hegemony and supermarket hegemony, their scale is so large that it is impossible to rely solely on a competition law to dismantle them or minimize the harm inflicted by their monopolization on society. Hence, President, a competition law is only slightly useful when it comes to regulating anti-competitive conduct. Notwithstanding this, we still welcome and support it because prices underpinned by monopolization will remain high forever. The current public concern is: Why are prices so high? It is because there are monopolies in Hong Kong, including the property, supermarket, bus, electricity sectors, and so on. Even The Link REIT is a monopolized operation. Because many things in Hong Kong are monopolized, prices will not fall back.

Although the Government's competition law might do something to regulate anti-competitive acts, can it bring prices down? Honestly, what can be done is very, very limited. Come to think about this. Hong Kong people are really extremely miserable. Let us begin from the moment they wake up in the morning. If they live in private buildings, they will find that their homes are monopolized by one of the 10 major property developers in Hong Kong, and they can obtain home mortgages from several particular banks only. When they go downstairs, they will find the security companies serving their buildings are

operated by several particular real estate companies, too. Domestic telephone services are provided by a handful of companies. And the same goes for mobile phone services. There are only two supermarkets chains, several bus companies and two electricity companies. Even if they go shopping for fruit, they must bear in mind that fruit is shipped to Hong Kong via container terminals controlled by several particular companies only. Hence, in Hong Kong, our living all day long is completely controlled by a couple of companies. Just as I pointed out just now, monopolies have become hegemony. It is very hard to turn the clock back. The greatest deficiency of the entire competition law is that it fails to resolve monopolies.

Nonetheless, we can still do some minor things. I recall an example of supermarket hegemony. The *Apple Daily* once made an attempt to operate an online order service but it was later terminated, why? It was because people could not make online orders for rice. The reason was that Cheung Kong (Holdings) Limited made a telephone call to Golden Resources, saying that should the rice supplier sell rice to the *Apple Daily*, all the supermarkets under Cheung Kong (Holdings) Limited would remove the commodities of Golden Resources from their shelves. This situation is not unique to the *Apple Daily*. I have also received another complaint from some people wishing to operate Groupon businesses — Groupon is very popular nowadays — but again they were suppressed when it comes to rice because they were denied rice supply. In theory, a competition law should be able to restrict non-competitive practices, but will other methods be used to circumvent the law to, on the one hand, restrict anti-competitive practices and, on the other, continue with the monopolization? We must re-examine the effectiveness of the competition law in future.

Although bid-rigging might possibly be restricted by a competition law, can bid-rigging be proved? Bid-rigging in land sales is particularly terrifying. Members should be aware of the exorbitant value of land. It is extremely terrifying should several consortia engage in bid-rigging to suppress prices jointly and then share the profits. It is very difficult to prove the presence of bid-rigging in land sales.

Let us take a look at the two supermarket chains, too. Although it is clear that they collaborate in fixing prices, can we accuse them of collusive price fixing? Not necessarily. It is indeed not easy at all to prove their collusion in

fixing prices. You may wonder why it is so strange that they might lower prices simultaneously. Such being the case, have they colluded in fixing prices? No one knows. Even if the Bill is passed and even if a Competition Commission is set up, I still doubt it very much whether price-fixing can be proved. Ordinary people will continue to be exploited by these two supermarket chains. Hence, President, I am really extremely worried about the effectiveness of the competition law. Certainly, the Labour Party supports it, but still we are extremely worried that its effectiveness will be very limited.

Another example I would like to cite is the elevator maintenance manual. I have been told that the manual is a monopoly for it is not allowed to be made public. Therefore, one can only hire a particular company for elevator maintenance, which means that other maintenance companies are denied entry into the market. So, what can a competition law do? The company owning the manual can describe its manual as intellectual property and question why it should share the manual with other companies. But then, it is enjoying a monopoly on the market, which is also a way of excluding competition. As a result, only this company can carry out the maintenance because it is the sole owner of the manual. Can the Bill resolve this issue?

In fact, how many existing distorted acts in the market can be tackled by the Bill? Even if the Bill cannot tackle many such acts, I still do not understand why it has taken several years before the Bill can be passed today. During the past several years, we could see that SMEs were greatly concerned, though many of their concerns have already been addressed now. For instance, there is no need for us to be afraid that large consortia will sue SMEs, because private actions have been abolished.

Politics-wise, the entire matter is extremely abnormal. The Bill was originally intended to prevent monopolization of the market by large consortia, which should be conducive to SMEs. But, on the contrary, throughout the discussion, operators of SMEs have expressed a lot of concerns and voiced opposition. Given that the Bill was supposed to help SMEs, what has actually happened? I find this very strange. Have the large consortia engaged in "brainwashing" operations behind the scene? I have no idea. My comment might be seen as disrespect for SMEs in describing them as easily susceptible to "brainwashing". But the truth is SMEs might not be easily susceptible to

"brainwashing"; instead, large consortia know very well how to engage in "brainwashing". I have no idea. Why has there been such a long delay, given this Bill was originally intended to help SMEs? Today, the Government has made a concession by raising the thresholds of $10 million and $100 million to $40 million and $200 million respectively. Given the substantial change to the regulatory threshold, more and more people are casting doubts about the effectiveness of the Bill *per se*.

After all, the Labour Party believes that the anti-monopoly cause as a whole has reached a small and phased goal, but there is still a long way to go. We do not know how long it will take before we can see the use of the Bill in the future because it will take another couple of years for the Competition Commission to be set up and begin receiving complaints. Hence, I hope that this piece of legislation can take effect expeditiously and the Commission start working expeditiously, or at least really change a small number of anti-competitive acts expeditiously. Nevertheless, Secretary, I have to tell the public that our ultimate goal is to dismantle the entire hegemony and monopoly regime in Hong Kong. Otherwise, our daily lives will continue to be controlled by large consortia.

Thank you, President.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR ABRAHAM SHEK: President, in the absence of the Competition Law, Hong Kong has on many occasions been ranked as the freest economy in the world by The Heritage Foundation of the United States. As a fervent advocate of free-market economy, Milton FRIEDMAN said, "Many people want the government to protect the consumer. A much more urgent problem is to protect the consumer from the government". The Competition Law whose objective is albeit to enhance economic efficiency and the free flow of trade through sustainable competition on a level playing field, is a strikingly similar example echoing FRIEDMAN's caution of the excessive "state's play". With the ambiguous key concepts worded in the law, what seems to be the velvet glove emblazoning the market efficiency, nevertheless, turns out to be a punitive wand

stalling the well-established market order, with which even the consumers' interest will be compromised.

A grave concern revolves on the implementation of the first conduct rule (clause 6) 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. First, clear-cut definitions of "undertakings" are left little known in understanding the real market structure in reality. As its current definition nets all legal entities regardless of whether they are related or otherwise, it risks a misplaced focus that the legal provision may over-target the undertakings without paying much heed to their company structure, such as whether any agreements are reached between the parent and subsidiary company or between the two which are in control or subservient to the third party.

Given the individual business operators normally have little bargaining power, trade associations have been formed with functions of collective negotiation of contract terms and discussion or sharing of certain market information. The wording "object or effect the prevention, restriction or distortion of competition ……" in clause 6 is too broad as the "object" of any agreements may have more than one "effect", and the effects may not necessarily be resulted from the "object". It would be more prudent if the provision is replaced by "object and effect ……" Moreover, in most competition law regimes, the prohibition against restrictive agreements does not apply to such intra-group dealings. For example, the Trade Practices Act in Australia expressly provides that the prohibition against restrictive agreements does not apply where the parties qualify as "related bodies corporate". It is logical that flexibility should at least be given to business operators in managing their business affairs within the same group.

In examining the threshold for exclusion from the second Conduct Rule (clause 21), which prohibits undertakings from abusing their substantial degree of market power in a market by engaging in anti-competitive conduct, much attention should be paid to the international practices especially in common law jurisdictions as relevant case laws may be indicative to the effective enforcement of the rule. However, while most overseas jurisdictions adopt the "dominance test" to invoke the second Conduct Rule, including different levels of market

share as indicative benchmarks, it is surprising to learn that the proposed turnover threshold in clause 21 is HK$40 million, adding doubt to how such a one-sized rule, with little reference to the overseas practice in setting the similar threshold of market dominance, would fit different sectoral markets in Hong Kong. As the turnover of each market varies, it seems too arbitrary to set the fixed dollar term as the threshold in determining the "substantial market power" which could only cause more confusion that certainty to each business sector.

As Hong Kong is ruled by law under which the principle of "equal justice under the law" is triumphed, it is disheartening to learn from the Government's proposed exclusion regime for statutory bodies (clauses 3 to 5). Not only is it inconsistent with international practice, it also sets an example of its disregard of the rule of law. As most competition law jurisdictions, including the European Union, the United Kingdom and the Mainland, apply the law to all entities engaging in economic activities, irrespective of whether they are owner or operated by public authorities and was recognized in "Government of the HKSAR's Statement on Competition Policy" in May 1998, the proposed exclusion regime is blatantly contrary to the Government's own stated policy. Considering the property sector to which I belong, statutory bodies like the Housing Authority, the Housing Society and the Urban Renewal Authority play competitive roles against the private sector in the property market amid the recent launch of "Heya Green" by the Housing Society. With the blanket exemption of the statutory bodies from the law, significant market distortion ironically against the wish of the Competition Law will entail, to the detriment of the public.

Although only six of 581 statutory bodies in the proposed list are not exempted from the application of the Bill, it remains unclear whether private parties dealing with excluded statutory bodies will have a *prima facie* exclusion, so do undertakings that are controlled by exempted statutory bodies but that are separately incorporated. It renders the regime immensely opaque and unnecessarily complex. Moreover, in clause 5(2)(a) and 5(2)(b), little details of the regulation the Chief Executive in Council with respect to a statutory body that is not exempted from the law are known. It not only contradicts the Government's argument for the exclusion regime of the statutory bodies, but it is also interesting to note the loophole that the statutory bodies which occupy a monopoly position in the market is not covered which defies the logic of the clause and even the objective of the Bill. Worse still, the exclusion regime

contravenes the rule of law: the Government should not be above the law, and the bodies it funds or sanctions should also not be placed above the law.

President, considering the extent of influence the unprecedented Competition Law may bring forth with colossal legal compliance cost to the business sector, it is vital that the Guidelines that will fill the flesh of the Bill indicating meanings of "market", "undertaking" and "substantial market power" should indiscriminately be subject to the scrutiny and approval by the legislature prior to issuance. Regular reviews of the law shall be conducted to ensure it practises what it preaches. In keeping track of the validation of power of the law, Friedrich HAYEK, the Nobel laureate in Economics, has noted in his book *The Road to Serfdom*, that "we shall never prevent the abuse of power if we are not prepared to limit power in a way which occasionally may prevent its use for desirable purposes."

(THE PRESIDENT'S DEPUTY, MR FRED LI, took the Chair)

Deputy President, I shall be voting against this Competition Bill because Hong Kong does not need a Competition Law. Thank you.

MS CYD HO (in Cantonese): Deputy President, we have talked about "monopoly by consortia and government-business collusion leading to the wealth gap" so frequently over the years that we can even repeat these remarks in our sleep. However, a competition law is not introduced until today. Whether the situation can see a slight relief as a result remains unknown. Deputy President, basically, the system all along adopted in Hong Kong has allowed consortia to reap exorbitant profits from a number of basic living necessities and domestic expenses.

I wish to talk about expenses on clothing, food, housing and transport, which are the basic necessities of every family. First, it is housing needs. Land has all along been a government monopoly. However, at present, the Government has, through either land sale by public auction or the Application List System, handed over land to a limited number of consortia. Expenses on

housing usually account for more than 50% of the income of a family in Hong Kong, except those living in public housing. However, only one third of the population of Hong Kong can be allocated public housing. A large number of people in the lower-to-middle class and even the middle-to-upper class are leading a difficult life due to the land monopoly. Even many middle-class executives have to live in sub-divided units. Why has the situation come to such a state? Actually, it is due to the monopoly at source. It has turned housing, something that meets people's basic needs, into a commodity of speculation.

Second, it is food. Deputy President, you must have a thorough understanding of this issue. The number of licensed meat importers is limited. Among them, an example is Ng Fung Hong. When the prices of meat rise, importers, of course, also raise prices. However, when the number of imported livestock increases, wholesale prices do not drop. As a result, prices at the retail level are impossible to drop as well. It is only in the last two to three years that the Government has proposed to seek meat suppliers outside Mainland China, buying chilled meat products from Southeast Asian markets to slightly alleviate the impact of monopoly caused by the Mainland system.

On the other hand, the problem concerning manufactured food is more serious because even import wholesalers of Hong Kong can exert an influence on prices. This issue has been covered in many newspaper reports. For instance, individual small business such as 759 Oshin House or small business operators wanted to enhance competitiveness through price mark-downs. Surprisingly, such a move was hindered by the wholesaler, making them impossible to obtain any supply of goods. If they insisted on marking down prices, the wholesaler might cease supplying goods to them. Is it due to pressure from consortia running supermarket chains that wholesalers dare not supply goods to smaller business operators? In the absence of a relevant law at present, it is very difficult to find proof of such conduct, and it also lacks a starting point to do so. Based on the monthly food allowance of $760 for each individual under CSSA, we can thus deduce that food accounts for at least 20% of the expenses of grass-roots families. And, monopoly also exists in this area.

As to transport fees and electricity tariffs, we all know that it is impossible to open the door wide to invite competition into the transport sector. The same happens in the power market as well. As basic network facilities or roads are

needed but the area of road surface is limited, it is impossible to introduce unlimited competition, but at least some degree of competition has to be introduced. However, under the design of the Government, not only power grids are separated, making residents on Hong Kong Island all along pay over 60% electricity tariffs more than residents in Kowloon and the New Territories, the Scheme of Control Agreements (SCAs) also ensure a guaranteed return. Consequently, the two power companies made profits to the full at the end of 2011, raising electricity tariffs by as much as 9.99% under the SCAs.

We can all see that many cases of monopoly are actually caused one after another by policies formulated by the Government all along. Therefore, other than putting in place a weak competition law now, many changes in policies can be made to shatter the monopolies. However, it can only be done with the Government introducing changes to its direction of governance in a fundamental manner.

Deputy President, among the four areas of clothing, food, housing and transport, free competition is present only in the area of clothing where people can cut some of their expenses. There is really a free market for clothing. People can go to the 1881 mall in Tsim Sha Tsui or the Landmark to buy expensive clothes, or they can go to places where factory outlet products are sold in Wan Chai or Sham Shui Po to buy clothes priced at $20 or $30. People can shop in Fa Yuen Street, too. Some pants priced at $1,600 in Times Square are sold for less than $100 in Fa Yuen Street. Actually, they are sold for $89.

Therefore, we can see that when we have an open market, different operations and various prices, people can greatly benefit. However, under the present system, every day when people open their eyes, they see their money earned with great pains, after taking a turn, all falling into the pockets of consortia. Once they open their eyes, they can see that the unit they are living in is filled with monopolization. Even for those who live in public housing, the building materials are provided by the Green Island Cement. When the light is turned on, the power is supplied by either CLP or Hong Kong Electric. When they go out in public transport, there are franchise agreements. When they shop for grocery, they have the only option of patronizing the two supermarkets or retailers where prices are controlled by wholesalers. Come to think about this. When we fish out a $100 note, 80% of its area is in the hands of consortia. No

matter how hard people work or how they are helped with government subsidies, all the money, after taking a turn, rests in the hands of those hegemonists.

Therefore, that changes must be introduced to these systems is not only because people are indignant about having their money being seized by consortia, but also because the monopolized situation in the market deprives people of the opportunity to get a job or to start a business. There are also monopolies in terms of the employment of workers. When small traders are unable to operate in a level playing field because the monopolization by consortia enjoying advantages through high land prices, small traders find it difficult to start a business and ordinary workers cannot but seek employment from the consortia. No small traders or just a small number of them can offer a job to these workers. This is also the Government's own making.

Actually, the Government should play the role of providing a level playing field. Not only should it enact this piece of legislation, it should also take action in other policy areas. Let me cite an example. In order to break up the monopoly of supermarkets, the Government should allow the operation of open-air bazaars in parallel and implement a more relaxed hawker policy. Consumers can thus shop at open-air bazaars, a genuine free market. For instance, prices are at their highest in the morning because produce is at its freshest. We can all see that prices of fruits at Canal Road Flyover are at their lowest at 10 pm. Only this can be said to be a genuine free market. Moreover, if the hawker policy is relaxed to allow operators to peddle at locations permitted by District Councils and thus give them free market entry and exit, supermarkets will lose the advantage of pricing monopolization.

Therefore, first, the Government should enact legislation against anti-competition acts in order to provide a level playing field; second, in the process of policy formulation, it should change practices that tolerate monopoly; and third, it should help, by means of allowances, grassroots who cannot maintain a living because of high market prices to meet basic necessary needs.

Therefore, Deputy President, I seriously disagree with the earlier ruling of President Jasper TSANG to repeatedly prohibit "Long Hair" from talking about The Link REIT. It is based on the following reason. The presence of The Link REIT is a result of a privatization exercise of the Government. In the process,

the authorities failed to handle the clauses in the sales contract well with the omission of clearly specifying in the sales contract the social responsibility of the operator of the shopping mall in housing estates. The shopping malls were sold under these circumstances. Moreover, the shopping malls were all sold to a single operator, that is, The Link REIT. Therefore, the ultimate objective outcome is that the Government has sold the whole grass-roots consumer market to a single business group. And, after the sale, allowances and subsidies, of course, are things of the past. However, this business group does not have any competitors in the grass-roots consumer market. Instead, all the retailers have to bargain with The Link over price. How can the price offered by these small traders be better than that offered by chain stores? As a result, the living of public housing residents has become more and more difficult, and many small traders have found it impossible to survive.

Deputy President, what is the way forward? It is a very difficult decision, but I still hope that the Bill can be passed. It is because, as in the case of the Race Discrimination Ordinance in the past, having a law is better than having none. However, all the teeth of this Bill today have already been extracted, with only the body left. So, it has no "bite" whatsoever. After the passage of this Bill "without bite", existing activities such as market manipulation and price-fixing may still escape regulation.

I wish to talk about an area in which I am well-versed, and that is, the textbook market. At present, the textbook market is worth $1.5 billion but there are only 12 publishers. In the past, there were more than 50 publishers. However, thanks to the Education Bureau, and thanks to government policies, a market that used to have no monopoly has turned into a monopolized market now. It is because the Education Bureau has often made changes to the syllabus, academic system and review mechanism, making less well-off and influential publishers impossible to cope. Therefore, only 12 publishers have remained in the market. The whole market is worth as much as $1.5 billion, but the relevant threshold is lowered. As mentioned by Mr LEE Cheuk-yan earlier, the threshold is relaxed from $10 million to $40 million, as well as from $100 million to $200 million. If the threshold is relaxed in this way, will it make some textbook publishers evade regulation?

The Government proposes now to subsidize universities with $4 million to compile and develop electronic textbooks. Universities are education institutions similar to statutory bodies. Deputy President, actually, I have grave concern about whether they will become a duplicate of the other statutory bodies, and that is, under an unchanged system, the Government uses public money to subsidize organizations that already receive public funding support and gives rise to monopoly at another level. We, in a helpless situation, have to pass this Bill today. However, we have to continue to follow up carefully to see the effectiveness of the legislation in regulating practices against and undermining competition after the threshold is relaxed.

Therefore, Deputy President, I deeply regret that specific provisions for the protection of the interests and rights of consumers are not included in this Bill. Today, we support this Bill. I also hope that it will get enough votes for its passage. I hope that after this miserable victory, the Government will review the effectiveness of the contents of the Bill as soon as possible. Most importantly, it should introduce changes to other basic policies, so as to eliminate some continuous monopolies accumulated over the years.

Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR FREDERICK FUNG (in Cantonese): Deputy President, a cross-sector competition law is finally introduced after prolonged lobbying for many years by the community. Regrettably, when the Competition Bill reaches the stage of the resumed Second Reading debate today, it has already been altered beyond recognition. Not only has it turned into a "toothless tiger", all its limbs have also been chopped off. On the one hand, the threshold for enterprises subject to the competition law keeps rising, and on the other, the penalties are being lowered, reducing the law to limited deterrence. Moreover, the regulation of mergers in the original Bill has become barely discernible now. The Bill, after amendment by the Government, can be said to be something which, though not totally useless, is not worth keeping.

Looking back at the course of the pursuit for a fair competition law, the process can be said to be long and difficult. When we take a look at our trading partners and various advanced economies such as the European Union, the United Kingdom, the United States, and even Singapore and Taiwan where the state of economic development is similar to Hong Kong, we can see that they have put in place a cross-sector competition law among more than 100 economies in the world. However, we have lagged far behind others. The duet sung by the Government and the business sector is to blame.

The SAR Government has governed the market by non-interference under the so-called philosophy of "big market, small government". It has always stressed that to allow market forces to work freely without intervention is the best way to foster and maintain competition. Moreover, it has unreasonably argued that the lack of an objective uniform standard to define the meaning of "monopoly" makes enforcement of the law difficult. At the same time, by citing the excuse of wasting resources, it has claimed that enforcing an anti-monopoly law requires the establishment of a large-scale statutory framework and the recruitment of specialized talents, which are a waste of social resources, ultimately leading to an increase in operation costs overall.

Deputy President, the strong obstruction posed by the Government and the business sector has given rise to long-term monopolies in society and the evil consequence of an unfair market. A large number of vested interest groups and hegemonies have arisen from the various anti-competitive acts in different sectors of the market. Worse still, cross-sector superpowers have even emerged. They have dominated all domains of people's living such as clothing, food, housing and transport, and they can indiscriminately make use of their monopolistic position in the market to eliminate competitors by means of predatory pricing. After wiping out the small traders, they can then mark up prices again to gain profits to the full. The public not only have no choices but have to pay excessive prices for goods.

Moreover, various horizontal and vertical agreements of collusion have become prevalent in the market. For example, an agreement is reached between competitors with an intent to fix prices or suppress tender prices (that is, bid-rigging), or to work hand-in-hand in market allocation to prevent new competitors from market entry. Another example is an agreement reached

between suppliers and retailers specifying that the price of a product cannot be set below a certain level, with the intent to fix prices and reduce competition, which is detrimental to consumer interests in the end.

The Consumer Council (CC) has, over the years, pointed out in its studies that inadequate competition exists in many sectors, including supermarkets, auto-fuel supply, textbook publication, and so on. Take the auto-fuel retail market as an example. The several oil companies in Hong Kong have obviously engaged in price-fixing. Whenever international oil prices rise, oil prices in Hong Kong surge. However, when international oil prices drop, oil prices set by every oil company will "stand firm", seeing all rises and drops simultaneously. And, a rise is always much faster than a drop. Apart from using "verbal coercion", the Government can practically do nothing to regulate this situation. Motorists also have no choices but to pay excessive fuel prices year after year.

Another example is the big supermarket chains. They have indiscriminately made use of their market dominance to fix retail product prices as well as exerting influence on suppliers' clients and pricing. Worse still, they have secured the strong support of The Link REIT which is in total lack of enterprise conscience, with an eye set on making money only for network expansion and even dumping through price cuts to strangle the room of survival of many small traders and wet market stall operators.

Moreover, there are also the oligopoly of the two power companies, the black-box operation among suppliers and retailers of such food as rice and pork, the Octopus payment system, and so on. Examples of anti-competitive conduct are too numerous to count and can be found everywhere. These evil consequences are the result of the absence of a competition law. A seriously unfair and distorted market not only reduces the room of survival of SMEs, but also limits their chance of market entry. Worse still, the rights and interests of consumers are greatly undermined.

Regrettably, the Government has turned a blind eye to such a situation of unfairness in the market over the years. Although the Government did commission the CC years ago to conduct a series of studies on competition in Hong Kong, and the CC also released its study report in November 1996 and

recommended the introduction of comprehensive fair competition policies and a fair competition law in Hong Kong to promote fair competition and eliminate anti-competitive business practices so that efficient companies with proper management can continue to survive, the Government only selectively accepted recommendations in the report and adopted the airy-fairy and stalling tactics to regulate anti-competitive practices with a "sector-specific" approach. The Government even proposed the formulation of self-regulatory codes of practice by various sectors. As a result, the vast majority of sectors were not subject to regulation. The Government demonstrated no heart and no strength, allowing market unfairness continue to exploit the rights and interests of consumers. It was not until 2000 that the Government regulated the telecommunications sector in certain ways to combat anti-competitive conduct and acts of abusing market dominance. Otherwise, the Government did not enact any legislation to restrict or prohibit anti-competitive conduct in the other sectors.

Deputy President, the Hong Kong Association for Democracy and People's Livelihood (ADPL) always thinks that the best way to combat anti-competitive conduct and protect consumer interests is the formulation of a clearly-defined competition policy first, supplemented by a complete and comprehensive competition law to act as support. In other words, the enactment of a competition law aims to ensure the implementation of competition policies to enable the Government to tackle anti-competitive conduct fairly in accordance with law and to empower relevant statutory bodies to conduct investigation, so as to prevent practices hindering or opposing competition, promote genuine fair competition among market participants and enhance economic effectiveness.

Under the regulation of a competition law, enterprises are not allowed to negotiate or restrict prices in secret anymore. Instead, they must maintain the prices of goods at a reasonable level to remain competitive. Along with it will bring enhanced quality of service and greater choice of goods, benefitting consumers in the end. These are the reasons why the ADPL has all along supported the enactment of a cross-sector competition law.

Unfortunately, the Government has always used stalling tactics to handle the enactment of a competition law. Although the Competition Policy Advisory Group was set up by the Government in 1997, the Statement on Competition

Policy promulgated in 1998 lacked both strength and heart. It was not until 2000 that the Government set to regulate anti-competitive practices in the telecommunications sector. No further actions were taken by the Government afterwards. It was not until 2005 that the Competition Policy Review Committee was set up. And, two rounds of public consultation were separately conducted in 2006 and 2008. In view of the widespread and strong support of the public, the Government finally introduced the Competition Bill to the Legislative Council in mid-2010. Subsequently, a Bills Committee was formed by this Council to scrutinize the Bill.

As the saying goes, "Good things never come easy." Despite the Bills Committee having held 38 meetings and met with deputations and individuals for as many as five times, some members of the business sector remained firmly resistant to a competition law, arguing that it would obstruct market freedom and casting doubts on the effectiveness of the Bill. They even raised alarmist talk, causing unnecessary fears among SMEs, thus making the Bill almost experience a stillbirth. The Government yielded every step of the way with no spine at all, greatly reducing the effectiveness of the Bill on the combat of anti-competitive activities. After scrutiny for almost two years, the Bill long awaited by the community, though seriously deformed, is finally submitted for Second and Third Readings today.

Deputy President, due to the time constraint, I will talk about my various views later in the discussion on amendments. I wish to speak now on a topic worthy of discussion ― the exemption arrangements.

Exemption arrangements are the more controversial provisions in the Bill. The conduct rules and mandatory requirements for compliance stipulated in the Bill are not applicable to statutory bodies. The authorities have proposed to exempt 575 statutory bodies among which the majority are not engaged in economic activities. Regarding the 160 statutory bodies that are engaged in economic activities, those activities are mostly related to public services or government policies on such areas as education, healthcare, welfare, public housing, and so on. Only six statutory bodies are not exempted.

The ADPL agrees in principle to the exemption arrangements for statutory bodies. We hold that when upholding major universal principles such as "fair competition" and "everyone being equal before the law", consideration must be

given to the actual operation and the due role and function of the Government in society before choices are made.

Deputy President, Member's criticisms may focus excessively on those finance- and business-related public bodies, stressing the need for fair operation in a free market and the need for public bodies not contending with the people for profit. Actually, apart from a handful of public bodies that have the potential to make profits, the vast majority of them rely on government funding for their operation to achieve respective social objectives. These bodies serve the public in a non-profit-making mode. For example, the Equal Opportunities Commission is a statutory body dedicated to eliminating discrimination against sex, family status and race; the Housing Authority is a statutory body responsible for the provision of housing for the grassroots and the formulation and implementation of public housing projects; and the Hospital Authority is a statutory body responsible for the management of all public hospitals in Hong Kong and the provision of healthcare services to the people.

Are we going to place all these public bodies in the free market to engage in fair competition with private enterprises? Take the Housing Authority as an example. Without the low-rent public housing provided by the Housing Authority, I find it hard to imagine how the grassroots can rely on mercenary property developers to find an affordable and comfortable home in the so-called free market. Many successful people nowadays lived with their parents in public housing when they were small. Their parents worked hard to pay for their education, which led them out of poverty step by step. Therefore, the work of the Housing Authority produces a stabilizing effect in society by giving the grassroots a content life, which is of immense social significance. We absolutely cannot interpret these government practices simply by principles of economic operation, let alone regulate these acts that serve social functions with the free market principle.

Similarly, we should also not regard the healthcare services provided by the Hospital Authority as commercial practices in a free market, making direct comparisons between the Hospital Authority and private hospitals and clinics. It is because this obviously disregards the deep-level meaning behind the provision of inexpensive healthcare services to people of the lower and middle classes by the Government.

Deputy President, perhaps people may query: Should everyone not be equal before the law? Will the exemption of statutory bodies from the competition law demonstrate a violation of the law knowingly by the Government and a reckless act of the Government? I think this is rather a query about the Government's prestige of governance and recognition than a genuine understanding of the competition law. In fact, the presence of competition law serves its own purpose and objective, and that is, to maintain a level playing field and regulate practices of market participants in order to achieve the aim of protecting the rights and interests of consumers. However, as in the domains of housing and healthcare I mentioned earlier, similar acts of the Government serve important social objectives, which are vastly different from free market practices that purely aim at making profits.

Besides, the financial tsunami has laid bare to the world the serious impact of greed and corruption in a free market on the global economy, thus forcing various countries to resort to extreme measures to salvage their financial systems on the brink of collapse. Such measures have included the massive injection of funds into banks, and even the nationalization of banks. Are these not serious violations of the principle of free market economy? However, if the governments of these countries did not take those actions then, the consequences would be inconceivable. Have we not learnt enough lessons from these experiences?

Moreover, the success of policies and measures integrating social objectives, such as the development of diversified and non-unitary industries in the economy and the support for social enterprises that provide development opportunities to disadvantaged groups, relies on strong government play. These examples are commonly found in foreign countries. Therefore, the ADPL has proposed many times in the past that the Government should set up public bodies to directly promote and participate in the development of new economic industries and social enterprises. It thus shows that only market participants should be regulated by a competition law. Public bodies set up to achieve social objectives should absolutely not be governed by the principles of free market operation.

I so submit.

DEPUTY PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR PAUL TSE (in Cantonese): Deputy President, I remember that a remark of Chris PATTEN, the last Governor of Hong Kong, has left quite an impression on our mind, and that is, if a Rolls-Royce performs well, and you have no idea why it is so good or why it is the most refined car, then do not meddle with it.

Many colleagues mentioned earlier today that Hong Kong has for years enjoyed the fame and record of the freest market. I need not elaborate on this. It is very hard to make a choice today. Some colleagues — including Mr WONG Yuk-man — queried why so few Members from the business sector had given speeches. And, some colleagues criticized why after so many years of efforts, the road to this good cause was still strewn with setbacks. In fact, one of the most important reasons is that today is another milestone — Does Hong Kong, a free market economy, need to undergo another significant change?

During the term of Chief Executive Donald TSANG, unfortunately, two major changes in direction or situation have happened, which made people remember him. One of such changes is forced and the other is out of his choice. I need not talk about the forced one. It has dealt a serious blow to the clean image and values of Hong Kong. The one initiated by him in this term of office is the legislating for a minimum wage and the introduction of the so-called competition law under discussion now.

Deputy President, perhaps the public often find the current situation dissatisfying. Of course, we have noticed hegemony in many areas. Many colleagues stressed earlier that complaints have frequently been made against oil companies, The Link REIT and even meat merchants. However, a relatively less discussed area is, very simple, the television we watch at dinnertime. Is the television broadcasting market monopolized by big enterprises? How have relevant matters been handled and how have competitors been treated? Complaints are often heard. In fact, in my experience, I have heard and come into contact with such situation. As the representative of the tourism sector, I have to point out that hegemony also exists in the sector. Airlines are engaged

in hegemony. When faced with competition from many small airlines, they often act in a predatory manner. And, when faced with many tourist agencies in a relatively weak financial position, they also often act in a predatory manner.

Please allow me to cite a very simple example, Deputy President. Let us take a look at the recent announcement on the fuel surcharge taking effect from 1 May to 31 May. Thirty-five airlines are involved. Apart from Air Astana and AirAsia, which are of a very small scale and mainly engaged in the sale of low-priced air tickets, what are the rates of fuel surcharge set by the other 33 airlines? Strangely enough, there are only two rates. One is $1,164 and the other is $253. Every airline does the same and quotes the same rates. Of course, people complain when purchasing air tickets that why tyres are not separately charged or why there is no tyre surcharge or wheel surcharge when purchasing vehicles. But, when purchasing air tickets from airlines, while the price of air tickets is relatively rather low — and it gets lower and lower — the fuel surcharge is often nearly as high as the price of air tickets.

Not only have the authorities concerned not stopped and investigated such a practice over the years, I even have enough grounds to believe that this time around, the Civil Aviation Department (CAD) has indirectly and directly encouraged airlines to take this opportunity to fix prices together. Regarding the rates of $1,164 and $253 I mentioned earlier, to a certain extent, it is the CAD that has asked airlines not to set different rates of fuel surcharge because their proposals may not be approved. Therefore, the CAD has told airlines to toe the line and adopt the same rates.

No matter whether a competition law is enacted or not, these practices of the Government are absolutely wrong. We aim to break up or combat monopoly. However, the Government itself is the biggest culprit — the one that causes these incidents. It is because, actually, as long as many policies over the years have paid a little more respect to the free market principle and refrained from being tilted towards the interests of big businessmen, big consortia, big property developers and big airlines, and rejected offers made by big airlines such as upgrading, free mileage and privileges, the Government can act with more spine, Deputy President. However, the problem is that despite many opportunities in the past for the Government to do some solid work, it let them slip.

I am afraid this competition law is not only a case of a damp squib, but also full of opportunities to hit the wrong targets. It is like legislating for the sake of legislating; legislating for the sake of "handing in schoolwork", in a bid to give the public an incomplete picture — giving them an impression that having a competition law is very good — but actually this is not the case at all. The genuine problem of monopoly is not addressed with adequate strength at all.

Of course, Deputy President, Members may say that this is not fair because the ongoing bargaining by Members against this Bill has forced the Government to make retreats and compromises. Now, arguments are made in reverse to criticize that this Bill has no strength at all and even if it is passed, it is simply "a waste of breath". To a certain extent, such a contradiction does exist, embodying the logic of "heads I win, tails you lose". I agree to such comments. In fact, I do not have much experience. As a new hand, I have joined this Council for over three years. However, I have often found that in considering these issues, we need to go back to the fundamental basis, that is, the fundamental guiding principle, to deal with them. Although we are the legislature and our duty is to make laws, sometimes we should not legislate for the sake of legislating. Many a time, a law itself must target mischief — legislation is only appropriate when malpractices are really targeted. The process of legislation, no doubt, drains both time and energy. However, a more important point is the outcome we get after enactment. We spend such a lot of public money on these efforts. In terms of law enforcement, is it the appropriate way to deal with relevant malpractices? If not, in my view, to legislate for the sake of legislating is practically unacceptable.

Of course, in an ideal society, legislation is not necessary. Everyone conducts himself well. However, this is just an ideal after all. Hong Kong has all along been such a free economy. If it is doubtful whether the effect of a law, after enactment, will help address these malpractices, we will have serious reservations about such legislation at this stage. Of course, after legislating for a minimum wage, we have come to another relatively important milestone today. Frankly speaking, I am feeling quite troubled now. Exactly which way should I choose to vote? Deputy President, the political party to which you belong may have already made a decision. Many things will be much easier for you. However, as an independent Member, I do need to listen to debates and make

careful consideration, and then the vote I cast eventually, though it is just a single vote, represents my stance after all. Regarding this point, I need to make this relatively important decision in a very balanced situation. I will do so in due course. And, regarding the various amendments today — actually, exactly what do such a large number of amendments tell us? First, of course, the Bill is highly controversial. Members do their utmost to strive for favourite outcomes before rendering support to the Bill. The Government may also be forced to make compromises at the Committee stage. However, another view or interpretation that, I am afraid, is unfavourable to the Government is that the Bill itself is actually not well thought through. On many occasions, after proposals are introduced, they are easily breached once they are attacked, or readily withdrawn once they are attacked. I am quite worried that this is another example. The Government has been too aggressive and too hasty in the entire course. Actions are taken before serious consideration is given to many issues. So, it has to immediately withdraw once it is attacked, giving rise to such a totally embarrassing situation now.

Deputy President, I talked about the problems in the tourism sector earlier. Please allow me to raise two more issues. Other than the fuel surcharge, the travel agency sector, in the face of the collusion or co-operation of airlines, though it is a highly institutionalized system — Deputy President, I think you are most familiar with the practices of the International Air Transport Association, which are basically a collusion among global airlines to force travel agencies to accept certain terms and conditions — of course, we have heard in recent years several relatively significant cases in Continental Europe. Airlines were meted out a massive fine for such collusion in either the United States or Europe.

Insofar as Hong Kong is concerned, initially I hoped that the competition law can really break down monopolies and does something about this aviation hegemony. However, regrettably, the Bill at hand now is a totally different matter, which does not help at all. As mentioned by many colleagues earlier, no matter whether it is pork and property prices or anything, the Bill seems to offer no help. Instead, it is afraid that the Singaporean experience will be repeated here. It is because after the provisions in the Bill are passed, many of them are in form only. The Bill is described by Members as "toothless", that is, all the teeth are extracted. In the end, it fails to hit the big consortia but SMEs instead. Particularly, some rules drawn up by such organizations as the Medical Council,

The Law Society and even the Travel Industry Council may often violate the provisions about to be passed. Take Singapore as an example. The vast majority of its cases involve SMEs. If this is the case, it is all the more meaningless, Deputy President. As to some other matters, perhaps I will discuss different provisions at various stages in future.

However, another point I wish to raise is relatively special. It is about the attack launched by Mrs Regina IP at the beginning of the debate. Colleagues in the Civic Party then counter-attacked. These exchanges are quite controversial. I have no intention to target any professions or any political parties. However, I wish to discuss why some people will hold that regarding this Bill, some professionals specialized in litigation have a greater need to declare interests. Of course, colleagues from the Civic Party are right in saying that any laws will basically give rise to legal consequences which, to a certain extent, help produce some job opportunities and business interests for lawyers. However, this is just the general case. Of course, the enactment of an additional criminal law will not particularly help boost the business of a barrister specialized in criminal cases — perhaps it may help but at least it is not often to come across such kind of law.

However, some laws do have an impact on certain specialized professions. To put it simply, for example, the copyright law has some special impacts on lawyers and barristers specialized in information technology and intellectual property cases; and the tax law, shipping law and the present competition law involve specialized areas in which few lawyers are engaged. It is believed that after the passage of the Bill, unless many foreign lawyers such as those from the United Kingdom or the United States come here for practice, it seems that it is rather difficult to find many representatives specialized in this field among local barristers in Hong Kong. Under these circumstances, I believe when opinions were raised in the United Kingdom, that is, the opinions of the British Bar, as did so by Mrs Regina IP, this issue should be subject to careful examination. In my view, this gives little cause for criticism but actions of a targeted nature are not necessary, and this is purely an opinion. Of course, as to the question of whether there is a need to declare interests, I think this is not a matter of interest declaration but an issue worthy of discussion.

Deputy President, another point I wish to raise again is that hegemony in Hong Kong has, over the years, developed to an extent that sometimes, if

over-caution is exercised to prevent SMEs or disadvantaged small companies and organizations from devising strategies to resist hegemony, it is, in reverse, a way to maintain hegemony. Perhaps, it may also be a case of doing a disservice out of good intentions. This time around, like the experience of Singapore I mentioned earlier, the relevant provisions are likely to, and even really indirectly help big consortia that have earned more than enough become a much stronger hegemony. On the contrary, while some small companies wish to take the opportunity to stretch their wings, these provisions do just the opposite to hit small instead of big ones, making them lose the chance to strengthen their "antibodies" or resistance against big consortia.

Deputy President, due to the time constraint, I shall stop here. I hope that I will speak again on relevant amendments when the opportunities arise. Thank you, Deputy President.

MS STARRY LEE (in Cantonese): Deputy President, over the past decade or so, the Hong Kong and Kowloon Vermicelli & Noodle Manufacturing Industry Merchants' General Association and its 60 member companies would agree among themselves the price increases of their products every year. They even placed advertisements to make public their decision. Even the Government's warning letters did not deter them from carrying on with their act of colluding with each other to fix prices year after year. It was not until now with the imminent voting on the competition law eventually that the Chairman of the Association, when interviewed by the media last week, indicated that since the competition law would soon be voted on, the Association would no longer place any advertisements, while the Association and its members would no longer agree among themselves the price increases of their products.

Since 1993, the Consumer Council (CC) has been conducting researches on anti-competitive conduct, including researches on sectors of public concern, such as supermarkets, oil companies, building maintenance, textbooks, and fuel for domestic use. Now, after 20 years, over 100 countries in the world have enacted their respective competition laws. Places where a competition law has not yet been put in place include Bhutan and North Korea. This reflects that insofar as efforts of combating anti-competitive conduct are concerned, Hong Kong still lags far behind.

Earlier, on behalf of the DAB, Mr WONG Ting-kwong already presented the general position of the DAB. I wish to add several points here.

First of all, the enactment of the competition law does not mean that all anti-competitive conduct will be pursued in accordance with the law. As a matter of fact, from the perspective of ensuring lawful competition in the market to protect consumers, the passage of today's competition law is only a step forward, and it is only a tiny step.

Firstly, the introduction of a competition law in Hong Kong should be based on the fundamental objective of ensuring free competition, enhancing economic efficiency and bringing benefits to consumers. However, when conflicts arise in the course of achieving such objectives, the goal of protecting consumers' rights is often sacrificed. For instance, when a merger activity is bound to have an adverse impact on competition, and will eventually be harmful to consumers, so long as this merger will enhance the overall economic efficiency, so that the benefit thus generated will be greater than the adverse impact caused to competition, such an activity is usually approved. In this regard, the principal objective of the competition law is to enhance the overall economic efficiency, rather than to protect the rights of consumers. This is the first undesirable point.

Secondly, through the formulation of the first conduct rule, the competition law prohibits enterprises within a sector from engaging in the conduct of colluding to fix prices and making agreements to share the market. With the formulation of the second conduct rule, the competition law provides that it is unlawful if enterprises abuse their market position and prevent competition. However, to address the concerns of SMEs about being caught by the law inadvertently, the Government has relaxed the de minimis arrangements of the two conduct rules. The Administration will propose amendments in this regard later. With respect to the first conduct rule, exclusion will be applied to non-hardcore anti-competitive activities if the annual turnover of the enterprises does not exceed $200 million. As for the second conduct rule, the Government has proposed that exclusion will be applied to enterprises with a turnover below $40 million. With this threshold, nearly 95% of all SMEs will be excluded from

the regulation of the second conduct rule. Moreover, in his speech on the resumption of Second Reading, the Secretary stated earlier that enforcement action would not be taken against enterprises with a market share below 25%. The series of measures will undoubtedly ease the concerns of the sectors. However, from another perspective, they will also unavoidably undermine the effectiveness of the competition law in combating anti-competitive conduct.

Thirdly, the Government has proposed a blanket exemption for the vast majority of public organizations. Many statutory bodies compete with other participants in the marketplace, and such competition may not relate to their core business but just peripheral activities. Thus, while the conduct relating to the discharge of statutory functions of the relevant bodies can be exempted, their profit-making economic activities should be subject to the Bill. Moreover, the broad exemption of statutory bodies will create an uneven playing field between the public organizations and the private sector.

Deputy President, the competition law under discussion today is not only imperfect, it is also hamstrung by many restrictions. Even if it is passed today, I share the same doubt with many colleagues as to whether it will be able to "knock down the big predators", and successfully combat hegemony in the supermarket, real estate and power sectors, as expected by the public. Nevertheless, even though the competition law is not as invincible as we have imagined, I still think it is worthy of our support.

First, the law-enforcement agencies will be vested with investigatory powers by the competition law, which changes the current situation of the absence of a law for invocation. The existing situation is undesirable. It is precisely due to the lack of statutory powers that even if there are complaints alleging enterprises of suspected price-fixing or abuse of market position, the existing Competition Policy Advisory Group (COMPAG) is unable to mount effective investigations to determine whether anti-competitive conduct has taken place in the market. It is also not possible to impose sanctions for any anti-competitive conduct, nor is there any mechanism for parties aggrieved by anti-competitive conduct to seek damages when a complaint is substantiated.

Thus, insofar as the competition law is concerned, although there are criticisms that "its teeth have been pulled out", we cannot deny that the law has not been rendered "toothless". Apart from the aforesaid power of investigation, at least the four types of hardcore anti-competitive activities, namely price-fixing, bid-rigging, market allocation and output control are not exempted in the competition law.

Second, the Government's proposal of granting a blanket exemption for all statutory bodies may be over protective towards certain bodies, which may not be desirable. However, I have noted the views of the CC on this. According to the CC, if an outright exemption is not granted and all statutory bodies are placed under the competition regime, it will be onerous for the Administration to examine the nature of all activities of the statutory bodies in order to determine which of the activities should be granted an exemption status.

Thus, a more pragmatic practice will be acting in the opposite direction, that is, granting a uniform exemption for all statutory bodies across the board first. After the implementation of the competition law, when complaints about unfair competition by the statutory bodies arise, the examination procedure will be activated, which includes consulting the Competition Commission to be established, with a view to comprehensively examining whether the exemption status of the statutory body should be maintained.

Deputy President, all in all, given that a competition law is a novelty in Hong Kong, something with which the general public and the SMEs are not familiar, I agree that we should take a tiny step forward first and enact the competition law, thereby allowing the law-enforcement agency to be vested with the power to investigate anti-competitive conduct. After the enactment of the legislation for a period of time, a review of the effectiveness of the law can be conducted, and further amendments to the provisions can be made when necessary, so as to provide a more level playing field for Hong Kong.

Deputy President, I so submit.

MS EMILY LAU (in Cantonese): Deputy President, I rise to speak in support of the resumption of the Second Reading of the Competition Bill.

A few days ago, I met a university scholar who has supported the enactment of a competition law in Hong Kong for a number of years. He asked me whether this Bill would be passed by the Legislative Council. Probably he had heard all sorts of rumours that had been "flying around". He said the Bill must be enacted. He insisted that although some amendments might be controversial to the extent that someone had likened the Bill to a tiger whose teeth had been pulled out, there must be a competition law. According to him, the competition law must be enacted even if it is flawed and imperfect. I believe not only members of the academic sector, even some members of the business sector also support the Bill. Many members of the public as well as consumers also support the Bill. Thus, the Democratic Party hopes that the Bill will be passed. Of course, there are items that need to be reviewed, and I believe these items will be mentioned in the debates over these two days.

Deputy President, both you and the Chairman of our Party had already pointed out the stance of the Democratic Party when you spoke. I only wish to add some of my views here and talk briefly about them. We are discussing the competition law now …… I believe the Secretary must know that at the moment the anti-business sentiment is heating up in Hong Kong. Members of the public have said to me many times that Hong Kong is "the city of the LI's family". When I worked as a reporter many years ago, a Member of the Legislative Council had told me that people in Hong Kong sweated and toiled for many years only to work for a few major real estate developers. His words reflected that the situation in which the monopolization of the majority of Hong Kong's resources by a minority of plutocrats has, indeed, taken roots in people's mind. Thus, over the years, the Democratic Party and many other groups have raised the question of why we do not make an effort to break this monopoly, so that the public will not need to work for the few prominent families.

Donald TSANG is being fiercely dressed down by a lot of people now. However, as some Members have pointed out, there are two laws which we had waited for their enactment for a long time, and he had finally agreed to their implementation. The first one is the legislation on minimum wage. Many surveys conducted have revealed that members of the public are now benefiting from it. The other one is the competition law. I very much hope that the Bill will be enacted as soon as possible, so that the community will see that it can really help some people.

How can we see its effectiveness? There are a few areas where the public wishes the competition law will be able to provide help. For instance, the oil prices mentioned many times just now — Deputy President, you have frequently mentioned this — which are always quick in going up but slow in coming down. Is this a case of price-fixing? The Administration often says that it cannot do anything, as there is no way it can check the accounts of the companies. I hope that after the legislation has been enacted, the Secretary will be able to tell the public clearly whether investigations can be carried out in this regard. Of course, someone may say that oil companies will not be afraid as these companies are doing business in countries all over the world. Though a number of these countries have already enacted competition law, these companies are still able to survive. However, we still hope that after the enactment of the competition law, the problem of oil prices being quick in going up but slow in coming down — a phenomenon considered unreasonable by the public — can be dealt with.

Deputy President, another area is the power tariff, an issue you frequently mention. This issue has been a great cause of concern to you since you joined the Legislative Council in 1991. When you no longer seek re-election in the future, no matter which of our party members is elected to join the Council, he will step into your shoes in making every effort to express this concern on behalf of the Democratic Party.

Mr Thomas CHENG, Chairman of the Working Group on the Competition Bill under the Consumer Council (CC), is a member of the Energy Advisory Committee as well as an Assistant Professor of the Faculty of Law in the University of Hong Kong. He has pointed out that since the two power companies are private companies engaging in economic activities, they should certainly be subject to regulation. If the Administration has to set a reasonable price for grid access in the future, it can make use of the competition law to deal with the issue. If the Hongkong Electric Company Limited (HEC) is unwilling …… I hope that the Secretary will further explain later whether the public of Hong Kong will benefit in this regard. The issue of whether the grid rentals charged by HEC during the liberalization of the market are reasonable can be dealt with by the competition law and the Competition Commission (the Commission). Thus, both issues of oil companies and the electricity market can

be dealt with by the law. Of course, there is also the issue of supermarkets, which has been mentioned by many Members.

All these issues are here before us. After the enactment of the legislation, if it still fails to deal with every issue on the agenda, it will be like what people have said — all the efforts we put into the enactment are futile. This legislation will be useless garbage, serving as a decoration only, while failing to help the consumers of Hong Kong; and of course, failing to help SMEs. Scholars and other people often do not understand why SMEs are so worried. It is because many people believe that this law will be able to help SMEs. I was once a member of the Business Facilitation Advisory Committee. Although I have ceased to hold office, I still attach great importance to the provision of a favourable business environment in Hong Kong. We understand that the vast majority of the business sector is SMEs. The enactment of any legislation has to set their mind at ease, so that they can feel that their interests are given due regard. This has been of great concern to the Democratic Party. While consumer rights are a great concern to us, we also hope that SMEs (particularly the small enterprises) will feel at ease.

The Administration has responded to this. The CC has indicated that the Government has now adjusted the thresholds of de minimis arrangements under the first conduct rule and the second conduct rule from $100 million to $200 million, and from $11 million to $40 million respectively. The CC holds that given this threshold, most SMEs that cannot afford to obtain legal advice on compliance will be exempted. Moreover, since hardcore anti-competitive conduct will not be exempted under the de minimis arrangement, and the turnover of the market monopolies — a subject of enormous concern to all — far exceeds the amount of $40 million as proposed by the Government, the CC considers these amendments acceptable. I understand that some colleagues in the Legislative Council still have many views, but I hope that these amendments will be able to bring peace of mind to SMEs.

The Democratic Party does not support anything that results in a worsening business environment in Hong Kong, or poses more difficulties to the survival of SMEs. Deputy President, we hope that the Bill will be passed today, or tomorrow or the day after tomorrow. We also hope that the Administration will provide sufficient resources to the Commission, so that those people can

commence their work in various areas that need such efforts as soon as possible, thereby opening a new page for the creation of a level playing field in Hong Kong.

With these remarks, I support resumed Second Reading of the Bill.

DEPUTY PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR ALAN LEONG (in Cantonese): Deputy President, the Civic Party has been urging for the enactment of a cross-sector competition law since it was founded. This has also been included in our election platforms for a number of times.

Just now some Members queried whether the Administration was hasty in enacting the law. In retrospect, as a matter of fact, the competition law was initially introduced by Governor Chris PATTEN in 1992. In a report submitted to the Administration in 1996, the Consumer Council (CC) proposed to fully introduce a cross-sector competition law and establish a Competition Commission (the Commission).

However, after the reunification in 1997, in becoming the first Chief Executor supported by the business sector, Mr TUNG Chee-hwa rejected the proposal of the CC. It was not until Mr TUNG had left office and Donald TSANG taken over as the Chief Executive that the Administration conducted consultation on this again. Deputy President, by then it was already 2005.

After years of discussions, and a period of two years in formulating the Bill, the Government submitted the Bill to this Council in June last year. In fact, the existing Bill under scrutiny is at great variance with the very harsh anti-monopoly law in the United States. As a Member mentioned just now, apart from the difference in the entire design between the anti-trust law of the United States and our Bill, the anti-trust law is also a criminal law; while our Bill is closer to the competition law of the European Union.

During the entire process, it seemed that the SMEs did not have any views against the Bill initially, without indicating that it would be unfavourable to them.

However, after the Bill was submitted to this Council, there came a drastic change. I cannot help but admire some consortia and those with vested interests who oppose the passage of the Bill into legislation. They can actually incite the SMEs, inducing them to believe a law which is aimed to protect their interests is detrimental to them.

Deputy President, as you may also remember, since the scrutiny of the Bill commenced in October when the current session of this term began, Members had once attempted to terminate the work of the scrutiny. I remember that some SMEs had raised queries at the public hearings, and asked questions such as: If handbag vendors in Fa Yuen Street suddenly acted in unison to increase the prices of handbags, would they be considered as price-fixing under the first conduct rule? Would the experts of the Commission take the initiative to conduct investigations which result in these vendors being subject to litigation? Deputy President, another question was: If newspaper vendors in the streets acted in unison to reduce the price of newspapers from $6 to $5, would this induce the same result of the former example, and would the newspaper vendors suffer the same destiny as the handbag vendors in Fa Yuen Street?

Most of these misgivings have originated from the misunderstanding of the first conduct rule. Deputy President, of course we know that the current Bill under examination basically prohibits two kinds of conduct only. The first conduct refers to making agreements or engaging in concerted practices that prevent competition, that is, price-fixing under the first conduct rule. The second conduct refers to the so-called conduct of "the strong bullying the weak", that is, the abuse of market power with the aim of harming competitors.

With respect of the queries we heard in the course of scrutiny and during hearings mentioned just now, if the persons who raised the questions knew more about the first conduct rule, basically their excessive worries would have been avoided. As a matter of fact, the first conduct rule aims to regulate conduct having the object or effect of preventing, restricting or distorting competition in Hong Kong. Just now I cited the examples I heard at the hearings. Be it the newspaper vendors in the streets, or the handbag vendors in Fa Yuen Street, their downward adjustment of the price of newspapers to $5, or the upward adjustment of the price of handbags in response to rise in costs will not constitute the offence

"with intent to distort competition". From the perspective of the effect of price increases, be it the adjustment of the price of newspapers to $5 by the newspaper vendors in the streets, or the handbag vendors in Fa Yuen Street acting in unison to increase the price of handbags, consumers still have a choice. They can go to the streets in the vicinity to buy newspapers, or travel from Fa Yuen Street to Tung Choi Street to buy handbags.

Thus, SMEs are over-worried. In order to reduce obstacles against the passage of the Bill, the Government has now further compromised the Bill's effectiveness in regulating anti-competitive activities. It is as if two more teeth of the tiger have been removed, rendering this Bill a "toothless tiger", as mentioned by some colleagues just now.

Compared to the original Bill proposed by the Government, the effectiveness of the current Bill under examination has been significantly reduced, as if a number of teeth of the tiger have been removed. Nevertheless, the Civic Party still considers that enacting the legislation is better than not enacting it at all. The introduction of the Competition Ordinance will establish and affirm the concept of fair competition. With the future progress in constitutional reforms and democratic elections, when the overall situation is more accommodating, we will be in a better position to eradicate the monopolization by consortia and the hegemony of real estate developers. We need to make a start in everything we do. Although the current Bill under examination is significantly less effective than the original Bill, at least it is a "zero breakthrough".

Actually, Deputy President, we need not worry about the enactment of the Competition Ordinance putting Hong Kong in a peculiar position, or as some colleagues put it, resulting in a drop in the global competitiveness rating of Hong Kong. It is not necessary for me to elaborate on this. Currently, over 120 countries and regions in the world have enacted competition law, or even the more stringent anti-monopoly law. No major problems have emerged in these places because of the legislation.

Deputy President, some Members also query whether barristers will benefit from this Ordinance. According to them, the increased demand for services in

relation to declaration of interests will bring considerable income to barristers. Dr Margaret NG made some insightful remarks earlier. I am not going to spend time discussing it again. Yet, Deputy President, I would like to point out that, if this argument holds water, it would be better for solicitors and barristers not to become Members of the Legislative Council, because laws enacted by the Legislative Council may lead to litigations anyway. Since this is the case, should they not become Members? Deputy President, a more important point is, we have to understand that when an ordinance is enacted or a new system is established, it is imperative to consider whether the economic and non-economic benefits are greater than the costs. We have to consider from this perspective. We must not over-generalize and make criticisms I consider not up to standard.

(THE PRESIDENT resumed the Chair)

President, other colleague have also mentioned that after the Bill has been passed, it is still impossible to eradicate all unfair competitive conduct immediately because some anti-competitive conduct may not necessarily be uncovered. Even if a number of oil companies set the pump price of oil at a certain level simultaneously, or a number of supermarkets set the price of mud carp and beer at the same level, this does not mean that they have breached the first conduct rule. President, we have to consider whether there is evidence of collusion to fix prices, and whether there is sufficient evidence to demonstrate that enterprises have reached agreements after negotiation on product prices. All these require the support of evidence. I hold that although investigations can be carried out by the authorities, the difficulties in investigation and law enforcement should not be underestimated. Even if the product prices of enterprises are the same, and the enterprises are increasing prices in tandem as well as reducing prices in tandem, we cannot, based on the superficial price changes only, determine that they must have breached the first conduct rule. However, we still need to seek the "zero breakthrough" first, followed by subsequent efforts of making continuous improvements. It is through the implementation of fundamental constitutional reforms, as well as elections based on democracy, universality and equality that we may have a chance to genuinely and thoroughly eradicate the situation of hegemonic monopolization.

President, as the Government has made concessions one after another, the current Bill under examination has become a "rather toothless tiger". The Civic Party expresses regrets about this. However, our members — Mr Ronny TONG in particular — will later propose amendments at the Committee stage in the hope that the amendments will restore some teeth to this tiger that has only very few teeth remaining.

Finally, I must emphasize that this is not a special Bill. Such an ordinance is not enacted in Hong Kong alone. Given that there have been persistent voices in society demanding the creation of a level playing field for many years, and the Administration is not legislating in a hasty manner, this Bill is worthy of our support.

The Civic Party supports the Second Reading of this Bill. I so submit.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Commerce and Economic Development to reply. This debate will come to a close after the Secretary has replied.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, first of all, I wish to express my heartfelt thanks to Mr Andrew LEUNG, Chairman of the Bills Committee on Competition Bill (the Bills Committee), Mr Ronny TONG, Deputy Chairman and other members of the Bills Committee for their efforts made in the scrutiny of the Competition Bill (the Bill). The Bills Committee has held 38 meetings over the past one and a half years, and discussed the clauses of the Bill in a meticulous, thorough, and comprehensive manner. The Bills Committee has also met many times with various organizations across the community, and received over 350 submissions from various sectors, including the business and industrial sectors, small and medium enterprises (SMEs), academics and consumer organizations. Here, I would like

to thank the Bills Committee and all the deputations and people who have taken part in the discussions and made submissions. In response to the views of Members and the public, the Government has also proposed a number of amendments with a view to perfecting the Bill so that it will better meet the needs of Hong Kong.

Many Members had asked why Hong Kong needed a competition law when they spoke today. The proactive participation of the Bills Committee and members of the public in the discussions on the Bill is the precise reflection that a competition law is an issue of common concern to the public. A free and level playing field is an important cornerstone for the success of Hong Kong economy. Competition in a market ensures effective distribution of economic resources, facilitates continuous innovation of products and services, enhances efficiency in supply, and induces more rapid responses from product and service providers to the needs of consumers. The Government's competition policy is to enhance economic efficiency and the free flow of trade through promoting sustainable and fair competition to achieve a win-win situation for both the business sector and consumers.

Just now some Members have pointed out that Hong Kong is an open and intensely competitive market, thus, there is no need to enact a competition law. There are also views that a competition law may undermine the competitiveness of Hong Kong enterprises. I would like to point out that although Hong Kong is an open and externally oriented economy, it does not mean anti-competitive agreements and practices will not emerge in the market. As a matter of fact, the complaint cases from various sectors received by the Competition Policy Advisory Group over the years serve to demonstrate the possible existence of anti-competitive conduct or restriction of competition in the market. The Statement on Competition Policy and the guidelines to define and tackle anti-competitive practices promulgated by the Government in 1998 and 2003 respectively have both given a brief account of the existing competition policy, and the anti-competitive conduct to be avoided. However, in the absence of a legal framework to implement the competition policy, we have been unable to tackle the relevant issue effectively.

A number of Members have also mentioned that according to the World Competitiveness Yearbook 2012 released by the International Institute for

Management Development in Lausanne of Switzerland, Hong Kong has been rated the most competitive economy in the world. But these Members may not have mentioned a point, and that is, the report has also pointed out that Hong Kong only ranks 55 under the category of effectiveness in the policy of preventing anti-competitive conduct. Thus, the Government has introduced the Bill with a view to putting in place a legal framework to formulate a set of conduct rules, and establishing the Competition Commission (the Commission) and the Competition Tribunal (the Tribunal) to be responsible for enforcement related matters and regulating anti-competitive conduct that may take place in various sectors. Some Members have also pointed out that in targeting anti-competitive conduct, the Administration must be vested with investigatory power. It is precisely because of this that clause 39 of the Bill provides that the Commission can conduct investigations. If the Commission has reasonable cause to suspect there is a contravention, it can conduct an investigation to effectively combat anti-competitive conduct. I would like to emphasize that this is a cross-sector ordinance that targets various sectors. The enactment of a cross-sector competition law in Hong Kong is based on a clear public mandate. The responses to the public consultation exercises conducted by the Government in 2006 and 2008 had indicated that the majority of views supported the Government's enactment of a cross-sector competition law.

During the scrutiny of the Bill as well as when Members spoke just now, some Members expressed the concern that it would be difficult for SMEs to understand and comply with the prohibition clauses under the Bill. Some Members and organizations hold that the competition law should target large enterprises, and have thus requested a complete exemption for SMEs from the regulation of the Bill. I wish to reiterate that the objective of the Bill is to combat anti-competitive conduct. All enterprises, regardless of their size, should be subject to regulation. Although SMEs in general have limited influence on the market, SMEs acting collectively can cause significant impacts on competition which are harmful to consumers. SMEs may also engage in such anti-competitive activities as price-fixing and bid-rigging, which are harmful to consumers and should be prohibited by law. Based on these reasons, we cannot accept that SMEs be exempted from the regulation of the Bill.

However, in the course of scrutinizing the Bill, we have heard clearly the queries raised by the Bills Committee and some members of the business sector

in respect of whether the Bill will affect the business environment, as well as the concerns of SMEs about being caught by the law inadvertently due to inadequate understanding of the Bill. Despite the fact that the Government agrees to the need to address these concerns, we also hold that the most important principle is that the Bill must be able to tackle anti-competitive conduct in an effective manner, meet the public expectations of implementing a cross-sector competition law, and cater for the actual circumstances in Hong Kong. On these major premises, in last October and April this year, we had respectively briefed the Bills Committee on the amendments proposed by the Administration in response to the business sector (particularly the concerns of SMEs). These amendments include:

(1) introducing a warning notice with the purpose of adopting a lighter enforcement approach in respect of non-hardcore activities;

(2) removing the Commission's discretion under the mechanism of infringement notice to ask an undertaking contravening the conduct rule to pay a sum not exceeding $10 million;

(3) providing arrangements for agreements of lesser significance and conduct of lesser significance in the Bill, so that agreements and undertakings the turnover of which is under the specified threshold will be excluded from the application of the conduct rule;

(4) revising the cap on pecuniary penalty from 10% of the global turnover and without a limited prescribed period to 10% of the local turnover for a maximum of three years;

(5) taking out the relevant provisions on the stand-alone private actions in the Bill; and

(6) excluding merger activities from the application of the conduct rules to comply with the Government's policy intent of not introducing a cross-sector merger regulation other than that of the telecommunications sector at this stage.

Later on, I will propose the relevant amendments at the Committee stage.

Some Members hold that the prohibitions are not clearly defined in the Bill, which poses risks for SMEs being caught by the law inadvertently. In order to make SMEs feel more at ease, we have proposed a series of amendments to the Bill. First, we have clearly defined in the Bill the four kinds of hardcore anti-competitive activities, namely price-fixing, bid-rigging, market allocation, and output control, with a view to coping with law-enforcement actions against hardcore anti-competitive conduct. With respect to alleged contravention of the first conduct rule for agreements not involving hardcore anti-competitive conduct, we have introduced a warning notice in the Bill with the objective of issuing warning notices to undertakings suspected of engaging in non-hardcore anti-competitive practices, thereby giving them a chance to be informed that their activities may have breached the first conduct rule, as well as allowing for reasonable time to correct the malpractices.

In the course of scrutinizing the proposed amendments mentioned, a number of members of the Bills Committee have expressed their wish that the Government can clarify the market share threshold for "substantial degree of market power" in the second conduct rule. The members also hoped that the Government could spell out the market share percentage below which an undertaking would be regarded as not possessing a substantial degree of market power in order to give additional certainty to the provisions. With regard to the market share threshold, in the Government's *Detailed Proposals for a Competition Law — A Public Consultation Paper* issued in 2008, it was proposed that the market share percentage threshold for "substantial degree of market power" should be about 40%. As for the "minimum" market share threshold, taking account of international practices and the fact that the threshold of a substantial degree of market power has been adopted for the second conduct rule, as well as the actual circumstances in Hong Kong, we hold that a market share of 25% should be adopted as the "minimum" threshold. In other words, unless there is other relevant evidence sufficient to prove that a certain undertaking has a substantial degree of market power, otherwise an undertaking with a market share below 25% will be regarded as not having a substantial degree of market power, and will therefore, not subject to regulation of the second conduct rule.

Apart from the aforesaid amendments, other amendments of the Government mainly reflect that the Government has taken on board the views proposed by the Bills Committee on some provisions and proposed some textual amendments related to the drafting of provisions for the purpose of enhancing the clarity and comprehensibility of the Bill. The relevant amendments have been submitted to the Bills Committee for consideration and discussion.

Some Members have proposed respective amendments to the commencement date of the Bill; drawing up of guidelines by the Commission; the scope of application of statutory bodies, specified persons and bodies; the composition and functions of the Commission; and the turnover thresholds for agreements of lesser significance and conduct of lesser significance. After careful consideration, the Administration holds that the amendments proposed by the Members are unacceptable. I would like to take this opportunity to give a brief account of the stance of the Government, and will make further explanation in detail when I speak at the Committee stage.

A Member has proposed an amendment and requested that the guidelines on conduct rules and all future amendments drawn up by the Commission should be approved by the Legislative Council. It is also proposed in the amendment that the first conduct rule and the second conduct rule will commence only after the relevant guidelines have been approved by the Legislative Council. We do not accept the relevant amendment. The objective of the Commission in drawing up the guidelines on conduct rules is to facilitate the understanding and compliance by the public and the business sector in relation to the Competition Ordinance. The guidelines do not form part of the Ordinance. A person will not incur legal liability merely on the ground that he has contravened the guidelines. Any determination of whether an undertaking has contravened the conduct rules will ultimately refer to the Competition Ordinance passed by the Legislative Council. We understand Members' concern about the guidelines. It is already provided in the Bill that the Commission must consult appropriate persons when drawing up and amending the guidelines. The Government has also accepted the views of the Bills Committee and introduced an amendment specifying that the Commission must consult the Legislative Council.

We hold that sufficient flexibility must be allowed for the Commission to respond swiftly to the situation in Hong Kong and changes in the market for subsequent issuance and amendments of the guidelines. As a matter of fact, imposing additional obstacles in relation to the work of the guidelines is not conducive to providing timely assistance to the sectors in their compliance with the Ordinance. We believe that the Government's amendment in addition to the existing provisions have already provided the best arrangement in striking a balance between offering flexibility in enforcement and ensuring the Legislative Council play its monitoring role.

Based on the same reason, we disagree to the proposal that the first conduct rule and the second conduct rule should come into effect only after the relevant guidelines have been approved by the Legislative Council. According to the arrangement for the implementation of the Ordinance, the Government will implement the prohibition provisions of the Ordinance, which include the first conduct rule and the second conduct rule, only after the Commission and the Tribunal are established, as well as other preparatory work such as drawing up of the guidelines is completed. Since the commencement notice is subsidiary legislation subject to the scrutiny of the Legislative Council, we hold that the existing arrangement has already ensured the gate-keeping role of the Legislative Council. The imposition of additional conditions and obstacles will certainly delay the implementation of the Competition Ordinance, which is not in line with public expectations.

Some Members have proposed respective amendments that provide for removing or narrowing the application of the relevant provisions to statutory bodies, specified persons and bodies, and the addition of a sunset clause so that the relevant provisions will cease to have effect after a period of time. During the scrutiny of the Bill, the Government has clearly stated that the objective of the exemption arrangement for statutory bodies is to ensure the provision of public service or implementation of public policy by the statutory bodies would not be interrupted by the introduction of the competition law in Hong Kong. Even though exempted bodies are not subject to the Bill, they are still required to adhere to the competition principle underpinning the rules. Exempted bodies found to have engaged in anti-competitive activities would be requested to rectify their anti-competitive conduct. As a last resort, the Bill also authorizes the Chief Executive in Council to apply the provisions of the Bill to the relevant

statutory bodies, and remove the exemption for the specified persons or bodies. We hold that the provisions of the Bill have already managed to strike a balance between ensuring the effective operation of the exempted bodies and imposing checks and balances on them. The Government has also undertaken to conduct reviews on the exemption of statutory bodies three years after the major prohibitions have come into effect. Since the exemption arrangement in the Bill is an important policy principle of the Government, we oppose the amendments proposed by the Members. These amendments, if passed, will directly affect the normal operation of some statutory bodies. Not only is this not acceptable to the Government and the community, it is also not conducive to the overall interests of Hong Kong.

A Member has also proposed an amendment in which the turnover thresholds of agreements of lesser significance and conduct of lesser significance will be adjusted to $100 million and $11 million respectively. The relevant amount was actually the figure proposed by the Government last October. In this connection, the Bills Committee had conducted a detailed study on this and invited organizations to submit views. Taking into account Members' views, the updated statistics provided by the Census and Statistics Department (C&SD), and under the principle of not undermining the overall effectiveness of the Bill, in April this year, the Government proposed to raise the relevant thresholds to $200 million and $40 million respectively. In the future, the Government will also review the turnover threshold for conduct of lesser significance from time to time having regard to the objective criterion of the average turnover of SMEs and the updated statistics provided by the C&SD.

Just now Members have expressed the concern that the Government's proposed threshold is too high, undermining the effectiveness of the Bill. I would like to emphasize that it is a common practice in other jurisdictions to make arrangements for agreements and conduct of lesser significance. In considering the turnover threshold, we have all along given priority to ensuring that the effectiveness of the Bill in tackling anti-competitive conduct, an issue of public concern, will not be undermined. According to the Government's proposal, the arrangement for agreements of lesser significance under the first conduct rule does not exempt any agreements involving hardcore anti-competitive conduct. The Commission can still conduct investigations into suspected cases of hardcore anti-competitive practices, that is, price-fixing,

bid-rigging, output control and market allocation, as well as taking immediate enforcement actions. As for the arrangement for conduct of lesser significance under the second conduct rule, though we have proposed to increase the turnover threshold from HK$11 million to HK$40 million, in the sectors of public concern, such as large chain stores, supermarkets and oil companies, the annual turnover of undertakings having market power far exceeds the proposed threshold of HK$40 million. Thus, these undertakings will not be exempted. Based on the aforesaid reason, I implore Members to support the amendment proposed by the Government.

Moreover, Members have also proposed amendments to require that at least one member of the Commission has the expertise or experience in SMEs, and at least one member has the expertise or experience in consumers' benefits. A Member has also proposed an amendment to require that the function and objective of the Commission be stipulated as enhancing economic efficiency through promoting sustainable competition to bring benefits to consumers. The relevant proposals have been discussed in detail by the Bills Committee, and the Government has explained the reasons for not accepting them. With regard to the appointment of members, the Government's policy intent is to appoint persons with expertise and experience in the businesses of SMEs as members of the Commission, so that the Commission will take into account the views of SMEs when enforcing the law. According to the provisions of the existing Bill, when the Chief Executive considers the appointment of a person as a member of the Commission, apart from "the expertise or experience in industry, commerce", the relevant criterion of "the expertise or experience in SMEs" has also been added. We hold that the existing provision has reflected the policy intent as well as the need for sufficient flexibility under the appointment mechanism. With regard to the appointment of representatives of consumers, since anyone who has been a consumer can claim to be representing consumers' rights, rendering the meaning of the term "representatives of consumers" vague and unclear, this kind of uncertainty is not beneficial to the appointment procedure and ensuring the effective implementation of the new law.

As for the enhancement of economic efficiency and the free flow of trade through promoting sustainable competition to bring benefits to both the business sector and consumers, this is precisely the stated objective of the Administration's

competition policy. Irrespective of whether there is the enactment of the proposed cross-sector competition law, the same objective still applies. Thus, the Government holds that it is not necessary to stipulate this established objective as one of the objects in relation to the functions of the Commission.

President, if the Bill and the Government's amendments are passed by the Legislative Council, we will implement the Ordinance in phases. Our first task is to set up the Commission and the Tribunal. The Commission will undertake publicity and education as well as formulation of the guidelines. This will enable the business sector to gain understanding of the new legislation during the period and make necessary adjustments. The major prohibitions will come into effect only after the completion of the relevant preparatory work. Based on overseas experience, we believe the preparatory work will take at least one year. When stipulating the date of commencement for the major provisions, we will take into account the readiness of the enforcement authorities and the various segments of the community for the full implementation of the law. Taking into account experience gained and problems encountered, the Government will also conduct a review of the Competition Ordinance in a few years' time after the prohibition clauses have come into effect. The review will cover the arrangements of differential treatment of hardcore and non-hardcore conduct, consider whether it is necessary to put in place stand-alone private action rights, and evaluate whether it is suitable and necessary for Hong Kong to formulate provisions for cross-sector merger control. Moreover, the Government will also review the scope of exemption for statutory bodies in three years' time after the enactment of the major prohibitions.

President, with respect to the subject of introducing a cross-sector competitive law in Hong Kong, it has taken many years of discussion in the community, and efforts made by Members in the Bills Committee over the past one and a half years to enter the final stage today. To ensure a fair, sustainable competitive environment in Hong Kong is the aspiration of the public. The consensus on the provisions of the Bill reached today by the Government, Members of the Legislative Council and various sectors in the community is not easy to come by. I implore Members to support the Bill and the relevant amendments to be moved by us later on.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Competition Bill be read the Second time. Will those in favour please raise their hands.

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raised their hands.

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

PRESIDENT (in Cantonese): There are 43 Members present, 36 are in favour of the motion, three against it and three have abstained ……

(Mr WONG Kwok-hing stood up)

MR WONG KWOK-HING (in Cantonese): President, I would like to rectify that I should have voted in favour of the motion but pressed the wrong button.*(Laughter)*

PRESIDENT (in Cantonese): Mr WONG Kwok-hing has requested that his vote be rectified to be "Yes".

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr LAU Wong-fat, Ms Emily LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Dr Samson TAM, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mr Vincent FANG and Mrs Regina IP voted against the motion.

Dr LAM Tai-fai, Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 43 Members present, 37 were in favour of the motion, two against it and three abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Competition Bill.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Committee stage. Council is now in committee.

COMPETITION BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Competition Bill.

CLERK (in Cantonese): Clauses 8, 11, 13, 15, 17, 18, 19, 23, 26, 28, 30, 31, 32, 36, 37, 38, 40, 42, 43, 44, 46, 47, 49, 51, 52, 54, 55, 57, 60, 62, 64, 65, 67 to 76, 79, 82, 83, 85 to 90, 93, 95 to 98, 100, 102, 103, 105, 107, 110, 122, 124, 126, 127, 128, 130 to 138, 140, 143 to 148, 150, 151, 152, 154, 156, 162 to 165, 168 to 171, 173 and 175.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses read out ……

(Mr Ronny TONG stood up)

CHAIRMAN (in Cantonese): Mr TONG, do you wish to speak?

MR RONNY TONG (in Cantonese): Chairman, the Second Reading of the Bill has just been passed by colleagues. However, we can note from their speeches that the Bill has met very strong resistance possibly rivalling the resistance encountered by the Minimum Wage Bill. Furthermore, it is evident from their

speeches that only a small number of Members really understand the contents of the Bill. I believe this might have something to do with the relatively technical nature of the Bill and the Government's inadequate publicity and lobbying.

We can see that more than half of the clauses of the Bill have to be amended. Chairman, during the discussion on the clauses to be amended, we should very often take into account clauses going to stand part of the Bill as well. In my opinion, in the course of doing so, we should explore why so many clauses will be amended beyond recognition. For instance, the Division 3 of Part 7 will be deleted entirely.

Chairman, I believe the Bill has met strong resistance because many people do not have a deep understanding of competition principles or the original intent of the competition law. During the Second Reading debate just now, many colleagues advanced a number of arguments, such as Hong Kong is the freest ……

CHAIRMAN (in Cantonese): Mr TONG, during the Committee stage, firstly, Members should target their speeches at the details of the clauses of the Bill; and secondly, the question proposed by me just now was that the clauses read out earlier stand part of the Competition Bill, whereas no amendments have been introduced to those clauses. I hope you can pay attention to it.

MR RONNY TONG (in Cantonese): Chairman, I understand. I was also saying just now that Members might need to take into account clauses to be amended as well when considering clauses going to stand part of the Competition Bill. For instance, these clauses include the one on the infringement notice. But, in fact, we will propose an amendment later to narrow the application of the infringement notice to certain undertakings only.

Chairman, do you imply that we should put forward these views when we discuss the amendments later rather than at this stage?

CHAIRMAN (in Cantonese): You are right. Members should now discuss the details of the clauses read out just now, to which no amendments have been introduced.

MR RONNY TONG (in Cantonese): Fine, Chairman. Then I will wait until we discuss the amendments to put forward my views.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, I have not joined the Bills Committee, but Mr WONG Yuk-man has joined it on behalf of the People Power. On the issue of competition, as I have spoken during the resumed Second Reading debate on the Bill, the subject has been my concern for more than 20 years. Chairman, as we look back at the clauses to be incorporated into this Bill, that is, the clauses read out just now which number about 40, many of them are seriously deficient. If these clauses are not amended and incorporated into the Bill and finally passed, the situation will exactly be like that described by me and Members from both the democratic camp and the pro-establishment camp, and especially those Members who favour the business sector and those Members from the Liberal Party during the Second Reading of the Bill, that this piece of law is deficient in regulating the giant consortia.

So Chairman, when showing their support for the clauses read out for their inclusion in the Bill, Members should see clearly and I think they should show their opposition to them instead. If Members are unhappy with the clauses for reason of their insufficient regulation of the giant consortia, I would urge Members to think carefully and then oppose the inclusion of these clauses in the Competition Bill. Since Members think that the clauses are insufficient in regulating the anti-competitive conduct of the consortia ……

CHAIRMAN (in Cantonese): I would like to remind Members once again that during the Committee stage, Members should debate on the details of the clauses instead of the principles behind the Bill.

MR ALBERT CHAN (in Cantonese): Chairman, what you are saying is correct. I am talking about the clauses. I would like to point out that in the case of say, clause 8 on the "territorial application of first conduct rule". To a certain extent, as the first conduct rule regulates the scope and content of conduct as stipulated in the clause, so if the clause can be amended to widen and add to the scope of the conduct rule, it will render the scope of regulation and power in the clause more effective.

Some Members, especially those from parties coming from the business sector, if they really believe in what they have said in their speeches and comments, that this Bill is a toothless tiger or a paper tiger …… Chairman, let us look at the numerous clauses that are going to be passed later on. These include clause 8 that I have just mentioned, or clause 11 which is about the administrative work and decisions of the Competition Commission (the Commission). As I have said in the Second Reading debate, if the decisions can target anti-competitive conduct that constitutes criminal offences or if the penalty clauses are made more stringent and severe, then the restriction and regulation of anti-competitive conduct would be more powerful. As a matter of fact, this is exactly what is found in the repeated accusations and worries expressed by the Consumer Council. I do not know if the Commission can effectively regulate anti-competitive conduct ……

CHAIRMAN (in Cantonese): Mr CHAN, please focus on the details of the clauses and do not comment on the principles behind the Bill.

MR ALBERT CHAN (in Cantonese): No, Chairman. This is really related to clause 11. Of course, I have cited some comments I made during the Second Reading debate. But since we have to pass the relevant clauses, I have pointed out the grounds and the factors ……

CHAIRMAN (in Cantonese): Please do not repeat those arguments which you should have raised during the Second Reading debate.

MR ALBERT CHAN (in Cantonese): Chairman, but I did not talk about clause 11 during the Second Reading debate. I was only making some comments on principle. Now I focus on the details on each of the clauses. In the joint debate to be held later on, I will have only 15 minutes to speak and I have to discuss clauses 8, 11 and 13. I will not have the time to talk about the clauses that follow. Moreover, clause 15 is about block exemption orders. This is to a certain extent more serious because an exemption would restrict the Bill by limiting its effectiveness as well as its general and universal nature. So naturally there will be acts that will affect consumer rights, hence resulting in not enough protection of consumers.

I wish to talk about clauses 15 and 17 which are about the effect of block exemption orders. Clause 18 is on non-compliance with condition or limitation. Clause 19 is on review of block exemption orders. Chairman, I wish to point out that these so-called exemptions will all the more seriously make the Bill a toothless tiger and paper tiger. As many Members have commented, the second conduct rule is too lenient and its scope of application is at great variance with the demands of many Members and citizens, especially the Consumer Council. So if the first conduct rule and the second conduct rule, including the functions of the Commission and the scope of exemption are passed as proposed, the kind of protection afforded consumers will only exist in name. Or it can be said that protection seems to exist in words but the reality is people will get very worried and even disappointed.

Chairman, when we debate other clauses, we can still put forward our views. But as Mr Ronny TONG said just now, that substantial revisions have to be made to many of the clauses shows the deficiency of the clauses in drafting. I have taken part in the scrutiny of many Bills and this Bill is ……

CHAIRMAN (in Cantonese): Mr CHAN, I wish to remind you again that there are no amendments to the clauses read out just now.

MR ALBERT CHAN (in Cantonese): Chairman, I know that there are no amendments to the clauses read out just now. But the number of clauses to which amendments will be made is terrifying. Please look at those clauses that we are to deal with later ……

CHAIRMAN (in Cantonese): If you want to discuss those clauses with amendments, please speak again when they are dealt with later on.

MR ALBERT CHAN (in Cantonese): Chairman, I understand. I wish also to point out that clauses like 150, 151 and 152 which we are going to pass later are basically about orders of the Tribunal, appeals to the Court of Appeal and such like routine procedures. As I have said, the penalties are extremely lenient, so the restriction imposed by these clauses on anti-competitive conduct can well be said to be lame indeed, or even non-existent.

Due to the fact that I am dissatisfied with the Bill and that if clauses 8, 11, 13 to 175 were passed, it would be like flying a white flag to signal surrender and giving a tacit approval that there is no need to protect the rights of consumers and there is no need to regulate and punish monopoly. I therefore urge Members to vote against them. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Commerce and Economic Development, do you wish to speak again?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, the Bills Committee has studied and discussed the clauses in detail. I have nothing to add.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 8, 11, 13, 15, 17, 18, 19, 23, 26, 28, 30, 31, 32, 36, 37, 38, 40, 42, 43, 44, 46, 47, 49, 51, 52, 54, 55, 57, 60, 62, 64, 65, 67 to 76, 79, 82, 83, 85 to 90, 93, 95 to 98, 100, 102, 103, 105, 107, 110, 122, 124, 126, 127, 128, 130 to 138, 140, 143 to 148, 150, 151, 152, 154, 156, 162 to 165, 168 to 171, 173 and 175, stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Mr Fred LI, Dr Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Emily LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Starry LEE, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Dr Samson TAM, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mr Vincent FANG, Dr Priscilla LEUNG, Mrs Regina IP and Mr Albert CHAN voted against the motion.

Dr LAM Tai-fai abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 38 Members present, 32 were in favour of the motion, four against it and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

(Dr Priscilla LEUNG rose)

CHAIRMAN (in Cantonese): Dr Priscilla LEUNG, what is your point?

DR PRISCILLA LEUNG (in Cantonese): I should have voted in favour of the motion.

CHAIRMAN (in Cantonese): I have announced the result of the voting and this cannot be changed. I did ask Members to check their votes, waited for a short while and announced the results of the voting only after Members had indicated that there were no queries.

CLERK (in Cantonese): Clauses 2, 6, 7, 10, 12, 14, 16, 20, 21, 22, 25, 27, 29, 33, 34, 39, 41, 45, 48, 50, 53, 56, 58, 59, 61, 63, 66, 77, 78, 80, 81, 84, 91, 92, 94, 99, 101, 104, 106, 108, 109, Part 7 Division 3 (that is, clauses 111, 112 and 113), as well as 114 to 121, 123, 125, 139, 141, 142, 149, 153, 155, 157 to 161, 166, 167, 172, 174 and 176.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, I move the amendments to clauses 2, 6, 7, 10, 12, 14, 16, 20, 21, 22, 25, 27, 29, 33, 34, 39, 41, 45, 48, 50, 53, 56, 58, 59, 61, 63, 66, 77, 78, 80, 81, 84, 91, 92, 94, 99, 101, 104, 106, 108, 109, 115 to 121, 123, 125, 139, 141, 142, 149, 153, 155, 158, 160, 161, 166, 167, 172, 174 and 176, and to delete Part 7 Division 3, clauses 114, 157 and 159. The amendments have been set out in the paper circularized to Members.

During the deliberations made on the Competition Bill, the Bills Committee has put forward many valuable and constructive opinions. The aforesaid amendments are made mainly for the purpose of responding to the views expressed by Members and the suggestions they have made. And in order to give greater clarity to the Bill, we have also proposed some textual and technical amendments or those related to drafting. I wish to explain in particular the following amendment proposals.

With respect to the interpretation clause in clause 2, we propose to add a provision on "serious anti-competitive conduct" as well as the definition of terms such as "bid-rigging", "goods", "price" and "supply". The relevant terms can be found in new clause 80A on warning notice, the amended clause 66 on infringement notice and new clause 5 in Schedule 1 on agreements of lesser significance.

We also propose to add a definition of "company secretary" to clause 2 to bring it in line with the definition of the same term found in the Companies Ordinance. We also propose to add a definition of "Communications Authority" to replace the two interpretations for "Broadcasting Authority" and "Telecommunications Authority" to reflect the change that has taken place after the establishment of the Communications Authority.

In respect of clause 21, we have accepted the suggestion made by the Bills Committee that with respect to the second conduct rule in assessing the market power of undertakings, apart from their market share percentages, consideration may also be given to other relevant factors. In line with overseas experience and in response to the proposal made by the Bills Committee, we propose to amend clause 21 to set out the factors that can be taken as reference in determining whether an undertaking has a substantial degree of market power. Such factors

include the market share of the undertaking, the undertaking's power to make pricing and other decisions, any barriers to entry to competitors to the relevant market, and any other relevant matters specified in the guidelines issued under section 35.

In respect of clause 58(3), we have accepted the suggestion made by the Bills Committee to amend the clause to provide that the Competition Commission (the Commission) shall consult the Legislative Council before issuing guidelines on complaints and investigations and before amending these guidelines. This is to make it clear that the Commission shall hold itself accountable to the public.

In order to delineate the legal status of the guidelines to be issued by the Commission, we also propose to amend clause 58 to add subsections (5) and (6) to provide that a person does not incur any civil or criminal liability only because he has contravened any guidelines issued; and that guidelines issued and all amendments made to them are not subsidiary legislation.

On clause 48 about empowering the Court of First Instance to issue entry and search warrants for premises, we have accepted the view of the Bills Committee and amended the clause to provide that the Court of First Instance may issue a warrant to authorize a person specified in the warrant, and any other persons who may be necessary to assist in the execution of the warrant. In addition, for the sake of clarity, we also propose to amend clause 48 to add subsection (2) to specify that a warrant issued by the Court of First Instance may subject to conditions imposed. And this approach shows clearly that all persons involved in the execution of a warrant are bound by the conditions imposed by the Court of First Instance and the power they exercise is only limited to that specified in the warrant. This will serve to protect the rights of those parties carrying out the investigation or being investigated.

With respect to clause 66 on the infringement notice, in response to the view of the Bills Committee and the concern of the SMEs that the maximum payment requirement of HK$10 million may constitute a grave burden to SMEs, we proposed in last October that the power of the Commission to impose a payment requirement under an infringement notice should be taken out. We propose to amend clauses 59 and 66 to effect the relevant proposal. We also propose to amend clause 66 to provide that an infringement notice only applies to

an agreement which is serious anti-competitive conduct or involves a contravention of the second conduct rule. Where no serious anti-competitive conduct is involved, the case will be handled by a warning notice provided in new clause 80A. We will elaborate on that point when we move the Second Reading of clause 80A.

With respect to clause 81 on reviewable determination by the Tribunal, the original clause does not include determinations made with regard to block exemption orders. We have accepted the view put forward by the Bills Committee that since a block exemption order would in general be applied to an agreement with widespread impact, so a formal procedure should be formulated to review a determination made by the Commission on a block exemption order.

We propose that clause 81 be amended to provide that a decision relating to the variation or revocation of a block exemption order made by the Commission under section 15 or 20 can be a reviewable determination. Any person who has a sufficient interest in the determination may apply to the Tribunal for a review of the determination.

On the publication of information by the competition authorities, we have accepted the Bills Committee's suggestion to state in the appropriate parts of the Bill that the competition authorities should use the Internet or a similar electronic network and in other manner the Commission considers appropriate in the publication of information. The relevant clauses include clauses 10 and 14 on the decisions made by the Commission on agreements subject to regulation of the first conduct rule; clauses 16 and 20 on procedures regarding block exemption orders; clauses 25 and 29 on decisions made by the Commission on conduct regulated by the second conduct rule; clauses 34, 58 and 63 on the inspection of the register concerning decisions and block exemption orders; the guidelines and amendments issued by the Commission on the conduct rules, decisions, block exemption orders, complaints and investigations conducted, as well as the register of commitments; clause 77 on the publication of infringement notices; and clause 161 on the publication of the Memorandum of Understanding to be signed between the Commission and the Communications Authority.

As for clause 91, the original clause stipulates that the Tribunal may impose a pecuniary penalty not exceeding 10% of the turnover of the undertaking

concerned, obtained in Hong Kong or outside Hong Kong, for each year in which the contravention has continued. Taking into account the view of the Bills Committee that this cap may be too high and may deter foreign investors and also the fact that the cap in the original clause is also higher than that found in similar provisions in other jurisdictions, we therefore proposed last year to amend the cap of pecuniary penalty in clause 91 to 10% of the turnover of the undertaking concerned in Hong Kong for each year in which the contravention occurred, subject to a maximum of three years; and if the contravention occurred in more than three years, 10% of the turnover of the undertaking concerned for the three years in which the contravention occurred that saw the highest, second highest and third highest turnover.

In Part 7, we propose to delete the provisions on stand-alone private actions, including clause 104 on the interpretation of "stand-alone action", and clauses 111 to 114 on the procedures of stand-alone actions. The proposed deletion is made in consideration of the concern of SMEs that stand-alone private actions may be abused by large enterprises to oppress SMEs. After the relevant clauses are deleted, a person who has suffered loss or damage still has the right to initiate follow-on action with respect to conduct ruled by the Court as a contravention.

In response to the concern expressed by the Bills Committee, we have also proposed an amendment to clause 106. The aim is to specify that proceedings can only be brought where the cause of action is the defendant's contravention, or involvement in a contravention, of a conduct rule; or where the proceedings are founded on more than one cause of action and any of the causes of action is the defendant's contravention, or involvement in a contravention, of a conduct rule.

The amendments to clauses 108, 115, 115A, 115B and 115C are mainly to specify matters concerning follow-on actions arising from competition matters. Regardless of proceedings concerning pure competition or composite competition matters, these shall be handled by the Tribunal. If proceedings brought before the Tribunal are competition matters, they shall remain to be dealt with by the Tribunal.

As for proceedings in the Court of First Instance, the Court of First Instance must transfer to the Tribunal so much of the proceedings before the

Court that are within the jurisdiction of the Tribunal, except in cases where it is the view of the Court that the proceedings should be retained for the purpose of serving justice. The amendment concerned is meant to confirm that the Tribunal is a dedicated Court, put into practice the policy intent of the Government and ensure the Tribunal should have primary jurisdiction on competition matters, including pure competition claims, composite claims and defence for alleged anti-competitive conduct.

As for the amendments to clauses 117, 118, 119 and 120, they are chiefly meant to state that apart from proceedings that can be brought under the Bill with a cause of action in the defendant's contravention of a conduct rule, proceedings with a cause of action involving an alleged contravention of a conduct rule can also be brought under the Bill.

With respect to clause 153 on leave of appeal requirements to the Court of Appeal in respect of a decision made by the Tribunal, we have accepted the view put forward by the Bills Committee and proposed to amend clause 153 and add new clause 153A, removing the leave of appeal requirements to the Court of Appeal and to bring in line the leave of appeal in respect of a decision made by the Tribunal to the Court of Appeal to the appeal requirements as stipulated in the High Court Ordinance. Put simply, apart from interlocutory appeals and certain orders issued by the Tribunal, lodging an appeal to the Court of Appeal is deemed as an undisputed right.

The amendments to clauses 158, 159 and 160 of Part 11 concerning shared jurisdiction are consequential amendments made chiefly to reflect the institutional framework changes that have taken place after the formation of the Communications Authority.

As for clause 161 on the Memorandum of Understanding (MOU) to be signed between the Commission and the Communications Authority, the proposed amendment is similar to the arrangements on guidelines issued by the Commission under clause 58. Apart from the publication of the MOU with the latest technology as mentioned earlier, the relevant amendment concerned also stipulates that the Commission and the Communications Authority must consult the Legislative Council before signing or revising the MOU. Also, the

amendments delineate the legal status of the MOU and provide that the MOU to be prepared and signed as well as the subsequent amendments made to it are not subsidiary legislation.

The Bills Committee has discussed all of these amendments and supported them. I implore Members to pass these amendments. Thank you, Chairman.

Proposed amendments

Amendment No. 2 (See Annex I)

Amendment No. 6 (See Annex I)

Amendment No. 7 (See Annex I)

Amendment No. 10 (See Annex I)

Amendment No. 12 (See Annex I)

Amendment No. 14 (See Annex I)

Amendment No. 16 (See Annex I)

Amendment No. 20 (See Annex I)

Amendment No. 21 (See Annex I)

Amendment No. 22 (See Annex I)

Amendment No. 25 (See Annex I)

Amendment No. 27 (See Annex I)

Amendment No. 29 (See Annex I)

Amendment No. 33 (See Annex I)

Amendment No. 34 (See Annex I)

Amendment No. 39 (See Annex I)

Amendment No. 41 (See Annex I)

Amendment No. 45 (See Annex I)

Amendment No. 48 (See Annex I)

Amendment No. 50 (See Annex I)

Amendment No. 53 (See Annex I)

Amendment No. 56 (See Annex I)

Amendment No. 58 (See Annex I)

Amendment No. 59 (See Annex I)

Amendment No. 61 (See Annex I)

Amendment No. 63 (See Annex I)

Amendment No. 66 (See Annex I)

Amendment No. 77 (See Annex I)

Amendment No. 78 (See Annex I)

Amendment No. 80 (See Annex I)

Amendment No. 81 (See Annex I)

Amendment No. 84 (See Annex I)

Amendment No. 91 (See Annex I)

Amendment No. 92 (See Annex I)

Amendment No. 94 (See Annex I)

Amendment No. 99 (See Annex I)

Amendment No. 101 (See Annex I)

Amendment No. 104 (See Annex I)

Amendment No. 106 (See Annex I)

Amendment No. 108 (See Annex I)

Amendment No. 109 (See Annex I)

Part 7 Division 3 (that is, clauses 111, 112 and 113) (See Annex I)

Amendment No. 114 (See Annex I)

Amendment No. 115 (See Annex I)

Amendment No. 116 (See Annex I)

Amendment No. 117 (See Annex I)

Amendment No. 118 (See Annex I)

Amendment No. 119 (See Annex I)

Amendment No. 120 (See Annex I)

Amendment No. 121 (See Annex I)

Amendment No. 123 (See Annex I)

Amendment No. 125 (See Annex I)

Amendment No. 139 (See Annex I)

Amendment No. 141 (See Annex I)

Amendment No. 142 (See Annex I)

Amendment No. 149 (See Annex I)

Amendment No. 153 (See Annex I)

Amendment No. 155 (See Annex I)

Amendment No. 157 (See Annex I)

Amendment No. 158 (See Annex I)

Amendment No. 159 (See Annex I)

Amendment No. 160 (See Annex I)

Amendment No. 161 (See Annex I)

Amendment No. 166 (See Annex I)

Amendment No. 167 (See Annex I)

Amendment No. 172 (See Annex I)

Amendment No. 174 (See Annex I)

Amendment No. 176 (See Annex I)

DR MARGARET NG (in Cantonese): Chairman, with regard to the clauses to which amendments were proposed by the Secretary just now, there are two points that I wish to put on record. The first is more of a technical nature. When the Secretary explained the clauses earlier on, he used two different Chinese terms,

which are "提起上訴" (to bring an appeal) or "提起訴訟" (to bring an action) and "提出上訴" (to lodge an appeal). It is impossible for us to discuss this point in the debate on this Bill because notice has already been given in respect of all the amendments, but in the course of the scrutiny on another Bill, Members have expressed reservations about the expression "提起訴訟".

As we have all along used "提出訴訟" in spoken Chinese, we consider the use of "提起" as in "提起訴訟" or "提起上訴" questionable. The Administration explained to us that the correct way to put it should be "提起訴訟". They also provided to us some entries in dictionaries to prove that when "訴訟" is mentioned, "提起" can be used indeed, but "提出" can also be used too. However, we do not see very clearly why the Administration considers it more correct to use "提起" as we have long been accustomed to saying "提出訴訟" or "提出意見" (to put forward views), instead of "提起訴訟". In this connection, Chairman, while it is impossible for us to propose any changes and as both "提起" and "提出" can be found in legal provisions currently in force, I wish to put this point on record, so that when the time is right, the Law Draftsman of the Department of Justice can discuss with our Legal Adviser which term is correct. Members who have taken part in the deliberations on another Bill that I have just mentioned are all of the view that "提出訴訟" should be used, rather than "提起訴訟", because when we say "提起", it can sometimes carry a different meaning.

Chairman, another point that I wish to put on record involves a principle of the utmost importance. Of the clauses read out by the Secretary earlier, clauses 104 to 153 involve provisions on legal proceedings and the establishment of the Tribunal. In the course of the deliberations on the Bill, the Administration had at one time proposed the addition of clause 153B. This is a very special provision, and I would like to read out the original provision here. The title of clause 153B is "Decisions of Tribunal not subject to judicial review", and the clause provides that (I quote) "No application for judicial review may be made under (section) 21K of the High Court Ordinance (Cap. 4) in respect of any decision, determination or order of the Tribunal made under this Ordinance." (End of quote) This is exactly what we in the legal profession refer to as an "ouster clause", which deprives people of their right to or prohibits judicial review. It is expressly provided that no judicial review can be sought in respect of the decisions, determinations or orders made by the Tribunal.

This is the first time in Hong Kong's history of law-making that government authorities have proposed the enactment of an ouster clause to bar judicial review. This is why we were all greatly shocked on hearing this proposal put forward by the Government at a meeting of the Bills Committee, not knowing why they have to do it. Besides, we are gravely worried that once this precedent is set and this "ouster clause" is included in a certain ordinance which provides for the prohibition of judicial review, there will definitely be many other Bills in which the inclusion of this clause is considered necessary by the Administration.

The inclusion of this clause is important in that judicial review is a most important power and duty inherent in the Court. It can be a duty and it can also be a power. It has a direct relationship with the rule of law. When will we apply for judicial review? We apply for judicial review when we consider that there is a case of *ultra vires* in the exercise of public powers by the executive authorities or public bodies. In other words, if the judiciary will monitor the executive authorities in the exercise of the latter's powers under the law, that is a most important power. By virtue of this power, the Court has absolute discretionary power to decide whether leave should be granted to an application or not. Even if leave is granted, the Court has the power to make a determination in favour of or not in favour of the applicant. Even if the case of the applicant is well-justified, the decision on whether or not the Court should provide relief entirely rests with the Court. Section 21K of the High Court Ordinance that I mentioned just now is precisely an express provision that confers this power on the Court.

Therefore, once this power is taken away, it is tantamount to not allowing the Court to review whether the Tribunal has acted against or beyond its legal authority in making a decision, determination or order. This is a very important decision. This is why our first reaction was to question why the Government would propose the inclusion of this clause, and according to the Administration's explanation, it was proposed out of the fear or concern that unnecessary litigation would arise if many people seek judicial review after a decision, determination or order is made by the Tribunal. It is because, according to the proposed structure, organization and setting of the Tribunal, the Tribunal already consists of the judges of the Court of First Instance and so, there should not be these cases of judicial review.

Chairman, the Tribunal is, in fact, a unique organization because the Bill provides that the Tribunal is comprised of the judges of the Court of First Instance of the High Court. It consists of the judges of the Court of First Instance, and the Chief Executive will, on the recommendations of the Judicial Officers Recommendation Commission, appoint the President and Deputy President of the Tribunal. So, the judges of the Tribunal are all judges of the Court of First Instance.

In this connection, clause 133 of the Bill provides that "The Tribunal is a superior court of record.". From this, we can come to the view that there should not be any possibility for judicial review to arise. Such being the case, why should a clause be included to prohibit judicial review of decisions made by the Tribunal? The Administration said that the provision which purely stipulates that the Tribunal is a "superior court of record" is not sufficient to ensure that no application for judicial review can be made. The Administration also cited a precedent to prove this point. But after studying this precedent, we still have very strong views on the clause as we think that since the Tribunal is primarily comprised of judges of the Court of First Instance, no application for judicial review will need to be or should be made. In that case, why should it be necessary to include this line? Is it not superfluous? Worse still, the inclusion of this superfluous provision will bring serious consequences.

However, the Administration told us that according to a precedent in the United Kingdom, even if it is a "superior court of record" and if no express provision is made to bar judicial review, it is still possible for judicial review to arise. Therefore, the Administration considered it necessary to eliminate the possibility of judicial review. We then pointed out that if there are good reasons to think that judicial review may possibly arise, why should it be barred? For example, the Tribunal is established in accordance with the law and if it does not act within the parameters permitted by the law in the exercise of its powers, why can people not seek judicial review? It was at that point that the Administration finally told us a fact which we never would have expected and that is, the proposal to stamp out judicial review or rule out the possibility of judicial review was made by the Judiciary. It was the Judiciary that requested the Administration to include this clause. Chairman, this really came as a complete shock to me.

When I first saw this clause, given that I am deeply concerned about the direct relationship between judicial review and the rule of law, coupled with the fact that traditionally, there has never been such an ouster clause to bar judicial review in any common law country and this is certainly based on some profound historical reasons, I consulted a number of experienced members of the legal profession and a number of respectable people with profound expertise in public law. They included professors, Senior Counsels and even former judges. I raised this issue with them and they did not have a clue even after giving much thought to it. Why should this clause be included? Why is it considered necessary? What impact does it have on the rule of law as a whole?

With regard to these questions raised by us, we have explained them in a paper submitted to the Bills Committee. Subsequently, in view of the strong opposition from us, the Administration finally withdrew clause 153B, and this is why we do not find clause 153B in the amendments proposed by the Government today. But in its paper to the Bills Committee, the Administration explicitly stated that the purpose of this clause (that is, the original 153B) is to ensure that (I quote) "any decision, determination or order of the Tribunal as a superior court of record should only be reviewed by way of appeal to the Court of Appeal, which is a higher court than the Tribunal in the judicial hierarchy" (End of quote) The Administration also pointed out in a paper that this was originally a request made by the Judiciary, and the Judiciary said that according to a precedent in the United Kingdom, a decision made by the Tribunal may be challenged and there should be the possibility of judicial review.

Chairman, if its decision is really challenged, people should be allowed to apply for judicial review, rather than being barred from doing so. But as stated in the paper concerned, the Judiciary further pointed out that according to the appeal procedures stipulated in clause 153, there is actually a sufficient channel of appeal because any person who feels aggrieved by a decision, determination or order made by the Tribunal can lodge an appeal to the Court of Appeal direct. For this reason, they do not think that the prohibition of judicial review will result in any actual loss.

However, the legal profession takes exception to this view. We do not think that this will cause no loss at all, because there is actually no way for us to ascertain whether or not there will be any loss. I have studied the precedent

provided by the Administration and found that it is stated very clearly that on the question of when judicial review is allowed or when it is not allowed, it depends on whether it is a court of limited jurisdiction or unlimited jurisdiction, or put in other words, whether there are limits to its powers. The Tribunal, which is established and empowered by the enactment of an ordinance or statute law, is certainly subject to the regulation of the law. So, the Judge in the United Kingdom said in the Judgment that in the case of a court of limited jurisdiction, it is certainly possible for judicial review to arise because it is possible that the Court may act in a way that goes beyond its judicial authority.

Chairman, from the relevant clauses we can see that the Tribunal consists of the judges of the Court of First Instance and a channel of appeal is available against the Tribunal's decisions, determinations, and so on. Therefore, even if an application for judicial review of its decision or determination is made, we think that the chance of it being granted leave by the Court of First Instance is slim. As a result, what will actually happen is that a judicial review can be sought successfully perhaps only in very few cases or even in none of the cases. But anyway, we should leave it to the Court to make a judgment, rather than incorporating into the law a clause to stamp out judicial review. That the request for the inclusion of this clause is made by the Judiciary which should be guarding the rule of law has given greater cause for concern.

Therefore, Chairman, I am very glad that as the Bills Committee has put forward these views which are supported by the authorities concerned, this request is eventually withdrawn. Having said that, I think this should be put on record, in the hope that it will never happen again in future.*(The buzzer sounded)* …… Thank you, Chairman.

MR RONNY TONG (in Cantonese): Chairman, as far as I can remember, it seems that there has never been a joint debate on so many amendments over the past eight years — let me do some counting here; there are about 100-odd amendments altogether. Of course, many of these 100-odd amendments are technical in nature, but many more of them are substantive amendments. They are not only substantive amendments, but also amendments in different aspects. I have thought about what I should do if I support some amendments but do not

support others. Fortunately, my voting preference is consistent on these amendments.

However, I think that in this debate, I still have to put forward my views on individual amendments which I consider very important, and explain my voting preference ……

CHAIRMAN (in Cantonese): Mr TONG, we are holding a joint debate on this group of clauses to which amendments are proposed because the Bills Committee has discussed these provisions and supported them. As for those controversial clauses, arrangements have been made for them to be debated at a later time.

MR RONNY TONG (in Cantonese): I understand, Chairman. I fully understand it. But as I said just now, these amendments involve different aspects and they are actually proposed for different reasons. Therefore, I think I should state my views at least on some amendments which, I think, are more important and will cause certain impact.

Chairman, with regard to my following speech, if I do not have enough time to finish it, I may have to raise my hand again to claim the floor. I would like to first deal with clauses 66, 80A and 91, and Part 7.

As I said in my speech earlier on, in the course of scrutinizing the competition law or when we were campaigning for the enactment of this law at a much earlier time, we had encountered difficulties which were unprecedented and quite uncommon. A major reason is that the Government, as I said in my speech earlier on, has failed to make adequate efforts in promoting, explaining and elucidating the spirit and intent or fundamental principles of this competition law. In this Council, I have listened to the speeches of many colleagues, and I find that they do not have a full grasp of the fundamental principles or spirit of this law.

I said this because summing up the many views put forward by colleagues in their speeches during the Second Reading of the Bill or in the speeches they made just now, they think that this law is enacted to impose punishment and

regulation on some people. This is why many colleagues said that this law serves to knock down the "big tigers" and if it fails to do so but imposes control on the SMEs or small business operators, they questioned whether this would be a right thing to do. Many colleagues even said that over the years, Hong Kong has been renowned as the world's freest city with immense competitive edges ……

CHAIRMAN (in Cantonese): Mr TONG, I have to interrupt you. At this stage, Members should not seize the opportunity of a debate to respond to the points of principles made by other Members during the resumed Second Reading debate. At this stage of the debate, Members should speak on the details of the clauses.

MR RONNY TONG (in Cantonese): I understand, Chairman. I understand. Chairman, I perfectly understand it. I only wish to start from this angle before I come to the reasons of my views on clause 66 that I am going to expound. Chairman, please bear with me for two more minutes.

Those views are actually wrong, because the fundamental spirit of this Bill is not purely to impose punishment or to impose punishment on big tycoons. The most important purpose is to promote a business culture, and this business culture cannot be fostered simply by punishing the big tycoons. For example, the infringement notice involved in clause 66 under discussion now is not intended to simply impose punishment. Rather, its purpose is to put in place legislation and some rules to gradually produce an effect through enforcement, thereby creating a good competition culture.

As I have mentioned earlier, many people hold that the business culture in Hong Kong is already perfect. This is why many colleagues said earlier that Hong Kong is the freest place or Hong Kong is the freest city for doing business. Some people have also said that Hong Kong is already very competitive and it is, therefore, unnecessary to enact a law to specifically impose regulation on certain acts. Chairman, I take exception to these views.

Colleagues have kept on mentioning earlier that Hong Kong is the world's freest city for doing business. As we all know, this is actually just a view published by the Heritage Foundation of the United States. Everyone knows that the Heritage Foundation is one of the most conservative think tanks in the United States, and it stresses perspectives which are very different from the business perspectives that are essential to Hong Kong. Such being the case, is Hong Kong the most competitive city in the world? According to a survey conducted in March, both Hong Kong and Paris ranked the fourth. But if we look at the several countries and cities which ranked higher than Hong Kong, namely, New York, London, and Singapore, we will find that a competition law is already in place in all these places. That those Members have put forward that view is precisely proof that they actually do not understand very well the fundamental spirit of the competition law.

As regards the infringement notice, as I said earlier on, it is not a system or provision intended to make arrests or impose punishment or generate additional revenue to the Treasury. The infringement notice is actually meant to target less severe anti-competitive conduct, so that through summary proceedings, such as a fixed penalty system or one which is similar to the issue of fixed penalty ticket for traffic offences, business operators in Hong Kong can be gradually convinced of cultivating a competition culture. Therefore, if this system is modified to become applicable only to serious anti-competitive conduct, it actually means reducing half of the fundamental effectiveness of this system.

This is precisely the result of the amendments now proposed by the Government. The Administration said that the infringement notice actually does not apply to less severe anti-competitive conduct, but it seems that the Government entirely has no regard to, as I have just said, the primary purpose of the infringement notice, which is to develop a good competition culture. Another purpose is to reduce unnecessary litigation. The infringement notice actually cannot produce any effect on the more serious types of anti-competitive conduct because disputes are often involved in serious anti-competitive conduct and a judgment by the Court is thus required. Therefore, if infringement notices are classified to the effect that the less severe anti-competitive conduct is excluded or even the SMEs are excluded from the scope of application, I think this is entirely a wrong thing to do.

But much to our regret, the amendments proposed by the Government have not only reduced the scope of the application of the infringement notice, but also deleted clause 66(3)(a) which provides for the imposition of a fixed penalty. The original clause 66(3)(a) provides for a pecuniary penalty to be capped at $10 million. With this provision on the maximum fine level, the various parties involved in less severe anti-competitive conduct do not have to fight with each other in court, and this can also impose penalty of a warning nature on operators engaging in anti-competitive acts. If the Bill does not have any provision to produce this deterrent effect, many people will not take it seriously, just as people know that it is wrong to spit on the street but they think that it is alright to spit out just a little but not too much on the street. Chairman, this entirely runs counter to a very important aspect of the fundamental spirit of the Competition Bill, which is to develop a good competition culture.

The deletion of the provision on the maximum fine level is not conducive to combating serious anti-competitive conduct. It is because if the punishment is too heavy, frankly speaking, businessmen will prefer to take their case to court, for they can at least stand a chance to win. Therefore, I really do not have a clue why the Government has made such a concession. Having said that, Chairman, I must make it clear that although we hold the strong view that this amendment is unacceptable …… When the Secretary made the proposals last year, and apart from proposing this amendment, he made a total of five major concessions, and this is one of the major concessions made. At that time, the democratic camp had great reservations about these five major concessions. But after detailed discussions with the Consumer Council and having consulted public views extensively, the democratic camp would ultimately hope to see the passage of the Bill, and if the democratic camp did not support these amendments, the entire Bill might be nipped in the bud as a result, meaning that its passage would be out of the question. Under such circumstances, we were forced to make an agreement with the Secretary that the democratic camp would accept the Bill, though with great reluctance, provided that concessions made by the Secretary would be confined to these five amendments.

Therefore, let me make it clear in the first place that even though we will eventually vote for these many amendments, we do not agree to many of their underlying principles and spirit.

I also have to make it clear that although we had forged a consensus with the Secretary that we could support the Bill if the Secretary would make only these five concessions, the Secretary has not honoured his promise. After we had reached this consensus, the Secretary made two further concessions early this year. Chairman, I will later on propose amendments in respect of these two concessions about the two upper limits for exemption. I will express my views when I propose these amendments. Here, I must first make it clear that it is difficult for us to accept clause 66 in principle.

Next, I will turn to clause 80A which is about the warning notice. The intended purpose of the warning notice is, in principle, the same as that of the infringement notice that I talked about earlier on. The basic principle is to target minor anti-competitive conduct by giving advice to business operators and educating them through summary proceedings or proceedings that do not lead to serious legal consequences, while bringing together and creating a competition culture that can meet the demands in modern-day society through the enforcement of the law.

However, under new clause 80A, the warning notice will bear no penalty and hence no deterrent effect. I personally cannot see what purpose such a warning notice can serve. In principle, the warning notice is issued to give some time to the person concerned, and if this person does not correct his malpractices within this period of time, other provisions will be invoked to impose regulation on him. In other words, during this period of time, there is no sanction to create deterrence; nor are there statutory rules to force operators to change or improve their business conduct. In the end, it is still necessary to rely on other provisions to enforce the law, in order to force operators who are impervious to advice to follow the basic conduct rules as provided for in the law ……

CHAIRMAN (in Cantonese): Mr TONG, there will be another session of joint debate for discussion on clause 80A, and you can express your views then.

MR RONNY TONG (in Cantonese): …… Thank you, Chairman, for your reminder, but I am about to finish. I think clauses 80A and 66 that I talked about just now complement each other, and I think it may be even more

inappropriate to discuss them separately. All I wish to say is that the amendments to clauses 80A and 66 that I have just talked about are, in fact, the same, and they complement each other. Our position is the same, and we consider that it is quite difficult for us to accept these amendments. But as I said earlier on, we have reached a consensus with the Secretary and so, we have to accept this Bill.

Chairman, as regards other clauses, I will discuss them later if no other Member rises to speak.

MR ANDREW LEUNG (in Cantonese): Chairman, I fully understand why Mr Ronny TONG thinks that the Bill faces so many obstacles. The barriers which we have often seen, such as those imposed on the Bill which was passed last week, are all caused by the pan-democrats. This time around, the obstacles seem to be coming from the business sector. I think it is a situation which Mr Ronny TONG seldom sees as obstruction is usually caused by the pan-democrats.

Chairman, pecuniary penalty and stand-alone private actions are the prime concerns of SMEs. First of all, I would like to talk about pecuniary penalty. The authorities originally proposed to set the maximum amount of pecuniary penalty at 10% of the annual global turnover of an undertaking in question. It was laid down in the relevant clause that "10% of the turnover of the undertaking concerned, for the year in which the contravention occurred" or "10% of the turnover of the undertaking concerned, for each year in which the contravention occurred". Many Members have queried whether the fines are set at too high a level. In response, the official said that it was just a cap and in determining the amount of pecuniary penalty, the Tribunal would pay regard to the nature and extent of the anti-competitive conduct, the loss or damage caused by the conduct, the circumstances in which the conduct took place, and so on. The amount of pecuniary penalty may not necessarily reach the cap.

However, for multinational corporations or enterprises which operate different kinds of business and offer diversified products, the impact will be tremendous. Looking around overseas jurisdictions, we will find that China, the European Union, France, Germany, Italy and the United Kingdom are countries

where penalty is imposed on the basis of the global turnover of the undertaking concerned. These are markets of large-scale economies. In relatively small-scale economies, such as Australia, Singapore and South Korea, pecuniary penalty is imposed on the basis of the local turnover. The maximum level of pecuniary penalty in Australia is AUD$10 million, or 3% of the value of the benefits derived from the contravention, or 10% of the local turnover of the undertaking concerned. In Singapore, the penalty rate is 10%, for a maximum of three years. In South Korea, the imposition of pecuniary penalty at the maximum level of 3% is mainly directed at abuse of dominance. In Canada, Japan and the United States, the amount of fines for enterprises or individuals is capped at a certain level.

I have all along requested that an amendment be introduced such that the rate of fines is based on the local turnover and the turnover derived from the contravention only. Hassan QAQAYA, Head of Competition and Consumers Policies Branch of the United Nations, has suggested that the pecuniary sanction on enterprises which have committed the offence for the first time may be less stringent provided that they adopt a co-operative attitude. But fines for repeat offenders should be much heavier. In his opinion, a maximum level of pecuniary sanction should be set, but it should not be too high, or else the survival of SMEs will be jeopardized as the competition law seeks to protect fair competition rather than disrupting the economy.

Chairman, a multinational corporation will, first of all, conduct a risk assessment, including cost of doing business, before deciding whether or not to come to Hong Kong for business operation. Those gigantic multinational corporations which set up their regional headquarters or offices in Hong Kong in the past or at present are all attracted by our competitive edges in the region such as our business environment and tax rates. If fines are imposed on the basis of global turnover under the competition law, they may weigh the size of Hong Kong market and the local turnover, which are relatively small compared with that of other countries, and the fines, which will become disproportionate to the profits derived from their business. Moreover, as the law is a piece of new legislation, they may not have thorough understanding of it and "unwittingly step on the landmines" because of technical failures. They will consider this not worthwhile.

Take an international banking corporation as an example. Its annual turnover exceeds HK$800 billion, in which only HK$3.7 billion is derived from local credit card service. If a technical error is committed in respect of the credit card business, the corporation will be subject to a fine on the basis of its global turnover. If the rate of fine is 10% of its global turnover, the amount of penalty will be as much as HK$80 billion, representing 80% of the net profit after tax, which is HK$800 billion for the same year. Compared with the HK$3.7 billion turnover in credit card service, the amount of penalty is simply out of proportion. Even though the Court may not necessarily impose the maximum pecuniary penalty, the corporation, from the perspective of corporate governance, will certainly assess its risk on the basis of the maximum fines and will not allow underestimation of risks. Under such circumstances, these multinational corporations may prefer Singapore to Hong Kong. They may simply shy away from the market of Hong Kong.

Even though the maximum statutory pecuniary penalty imposed by the European Union is 10% of the global turnover of an undertaking in the preceding business year, the European Commission, in its updated guidelines for setting of fines released in 2006, states clearly that "the sales volume of products or services directly or indirectly connected to the contravening conducts of a company in the region concerned during the preceding business year" should be taken into account in the calculation of fines. Therefore, I consider it inappropriate to set the level of penalty too high in the initial implementation of the law. Nor is it necessary to levy a fine which is the highest in the world, in order not to pose hindrance to the development of enterprises.

Subsequently, the authorities have accepted my advice and changed the maximum fines to 10% of the local turnover in the past three years. I think the relevant amendment will carry sufficient deterrent effect in such a small and externally oriented economy as Hong Kong.

Chairman, next I wish to talk about the issue of stand-alone private action. Soon after the publication of the Blue Bill, the sector, especially the SMEs, showed its grave concern about private action. On 29 and 30 November 2010, the Bills Committee held two lengthy meetings at which organizations were invited to express their views on the Bill. Many SMEs were concerned that the arrangement for private action might be abused and became a weapon for large

consortia to harass the SMEs. Since the SMEs have limited financial and legal resources in countering the large consortia, they will be at a disadvantaged position when facing lawsuits. Although the authorities have emphasized that the Competition Commission (the Commission) and the Competition Tribunal (the Tribunal) will hold the pass and reject trivial and frivolous complaints or lawsuits, some SMEs still express to me their concern that the relevant decision would be affected by subjective value or political pressure at the prevailing moment. The Federation of Hong Kong Industries and a group of representatives from the business sector have suggested to the Government that only follow-on actions be allowed to avoid excessive litigations.

The Tribunal proposed to be set up by the Government will be a superior court of record, so the litigation costs that may be incurred will be substantially increased. The SMEs are concerned that once they get involved in a legal action, they will find the litigation costs and pressure hard to bear. At the early stage of deliberation on the Bill, I told the authorities that as follow-on actions were provided for in the Bill to allow the affected parties to file a claim for compensation against anti-competitive conduct, would the authorities consider shelving for the time being the stand-alone private action at the initial implementation of the law so as to allay the concerns of SMEs?

I remember that at the meeting on 25 January 2011, some Members asked Secretary Gregory SO, who was the then Under Secretary, whether he had assessed the impact. In reply, the Secretary said, "I understand the concerns of the industry. But given that examples of private action in foreign countries are very few, it is projected that private actions will not occur in Hong Kong. The Competition Commission which has a role to play in private actions will be able to stop frivolous lawsuits." After hearing his remarks, the industry really could hardly rest assured. It was even more worried because the Secretary said that examples of private action in foreign countries were very few. After our repeated lobbying efforts inside and outside this Council, Secretary Gregory SO finally agreed to the views of the industry at the Bills Committee meeting in October 2011 that the target should not be achieved in one stride. He also proposed abolishing stand-alone action by individuals and removing the relevant clause from the Bill.

The authorities also indicated that the Commission would be responsible for enforcement in the initial implementation of the law and those who had suffered loss would still be entitled to initiating follow-on actions in respect of convicted offences. A review of whether there is a need to introduce the stand-alone right of private action would be conducted when the Administration has gained more experience in relation to competition law. I think such an approach is acceptable.

Chairman, I so submit.

MS AUDREY EU (in Cantonese): Chairman, I only wish to add some more points to the speech of Dr Margaret NG just now. Dr Margaret NG mentioned the request of the Judiciary to add section 153B to the Bill, or an ouster clause referred to by Dr Margaret NG, with the purpose of depriving the public of their right to seek judicial review.

On learning about that, we were very surprised because if a person is going to seek judicial review and other — I said "to seek" rather than "to submit" or whatsoever — there is a small difference between seeking judicial review and initiating other legal actions. Once a lawsuit has been filed, the Court will deal with it according to the timetable of the complainant. However, the time limit for a judicial review is very short and a decision has to be made in three months, the sooner the better. Furthermore, while the leave of a judge is required for a judicial review to go ahead, this is not required for other legal proceedings. In other words, if someone wants to scare people by filing a lawsuit, after it has been filed ……

MR ALBERT CHAN (in Cantonese): Chairman.

MS AUDREY EU (in Cantonese): …… then the lawsuit ……

MR ALBERT CHAN (in Cantonese): Excuse me, Dr Margaret NG.

CHAIRMAN (in Cantonese): Mr Albert CHAN, what is your point?

MS AUDREY EU (in Cantonese): I am Audrey EU, not Dr Margaret NG.

MR ALBERT CHAN (in Cantonese): I am sorry, Ms Audrey EU. Chairman, I would like to request a headcount because I hope that more Members can listen to Ms Audrey EU's speech.

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Ms Audrey EU, please continue.

MS AUDREY EU (in Cantonese): I spoke just now to further elaborate the point mentioned by Dr Margaret NG, that the Judiciary had intended to propose the addition of section 153B, which sought to deprive the people of their rights to judicial review.

Why were we surprised by it? Chairman, as I explained just now, it is because judicial review is different from general lawsuits. Firstly, the time limit of a judicial review is very short, only three months; secondly, it cannot go ahead without the leave of a judge. In contrast, an ordinary legal action can stand idle in Court for many years after initiation according to the judicial system. We may describe the case as being "dormant". However, this is not possible for a judicial review because, once it has been filed, the judge has to deal with it immediately. A judicial review will come to an end if leave is not granted by a judge. On the contrary, if the leave of a judge is granted, summons can be issued to the Government or the relevant defendants so that the case can go ahead. Therefore, it is almost impossible for anyone to abuse judicial review

because the applicant has to go through this hurdle first and this hurdle is very strict.

Therefore, we were surprised why the Judiciary would consider it necessary to add a provision to bar judicial review. Later, it was rumoured that this was due to the lack of judges and other resources. It was worried that there would not be enough judges to deal with judicial reviews. This is not a good reason. If judicial review has turned into a dispensable item for such reasons as difficulty in recruiting judges, or shortage of judges due to insufficient resources allocated to the Judiciary by the executive authorities or the Legislative Council, it will become a pressing issue because judicial review can be regarded as the cornerstone of the rule of law. As Dr Margaret NG explained just now, if the executive authorities are too overbearing or breach the law, the only remedy for the public is to seek justice in the Court. So, this is a most important symbol of the rule of law. That is why we find it unacceptable that an ouster clause is added to the laws of Hong Kong unprecedentedly as it will deprive people of their right to judicial review.

I also hope that the point mentioned by Dr Margaret NG and my elaboration can make the public, the Judiciary and the Government understand that such a clause should never be proposed lightly. I am also glad that the Government has withdrawn the relevant amendment.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr Ronny TONG, you may speak for a second time.

MR RONNY TONG (in Cantonese): Chairman, I would like to continue to express my views on the amendment to clause 91 of the Bill.

Among all the amendments, the amendment to clause 91 is most baffling. We must not use the request of SMEs as the pretext for proposing the amendment because the sole objective of this amendment is to protect large enterprises. According to the original clause, the maximum amount of a pecuniary penalty imposed on an offence is set at 10% of the global turnover of the undertaking

concerned — Chairman, let me emphasize that this is the maximum penalty — we often set ceilings for fines in various ordinances. But the purpose is not to stipulate the amount of fine to be imposed by the Court. Rather, it restricts the powers of the Court to impose fines. Therefore, when the maximum fine has been set, generally it is rare for the Court to raise the level of pecuniary penalty to that limit or close to that limit.

So, basically, there should not be any dispute on the ceiling of the pecuniary penalty unless you own a big corporation and you are afraid that the irregularities committed by your corporation are so serious that a fine close to the maximum level will be imposed. That being the case, we have to take several factors into account when considering the maximum level of fines. First of all, Hong Kong, as an international business centre, has attracted many investors from other countries to do business here. Most of these investors come from countries where a competition law has been enacted as almost all civilized countries in the world, regardless of whether they are business-oriented or not, have enacted a competition law. In fact, no country in Southeast Asia, except Hong Kong and Myanmar, has not enacted a competition law.

So, when these enterprises have suddenly come to a place where no relevant legislation has been enacted, they would have nothing to fear. This is a big incentive for them, so big that they may engage in some conduct in Hong Kong which is disallowed in their own countries. Therefore, the pecuniary penalty to be imposed according to their global turnover targets those entrepreneurs who come to do business in Hong Kong. If the clause is narrowed down to local turnover, it will not have any deterrent effect on foreign investors, particularly those who have just entered the market of Hong Kong.

Chairman, many SMEs have also expressed their dissatisfaction to me that if the amendment, which seeks to impose a fine of 10% of the local turnover in three years, will only regulate local business operators, then foreign operators, especially those new entrants in the market, will not be punished despite flagrant violation of the Ordinance while local business operators will be severely punished. This is very unfair to them. Virtually, this will invite international corporate investors to Hong Kong in order to exploit and oppress the local business operators, particularly the SMEs.

Chairman, in many other examples we can see that some multinational corporations can make very handsome profits after engaging in anti-competitive conduct. Let me cite a well-known example. It is a case concerning Cathay Pacific Airways of Hong Kong. Many years ago, the company engaged in collusive pricing with other airlines, violating the competition law in Europe, for more than six years. It had made enormous profits despite huge amount of fines imposed by the Europe Union. After computation, many people still considered that the profits made by the offenders were sufficient to pay the fines.

Therefore, if the level of maximum penalty is too low, it will not be able to capture the "big tigers" or exert any deterrent effect on them. Therefore, we consider this amendment baffling and unacceptable. In our opinion, Chairman, this amendment has shown that the authorities have succumbed to the large consortia in Hong Kong. But unfortunately, one of the five concessions proposed by Secretary Gregory SO last year is to lower the maximum penalty. Therefore, we totally disagree to the idea behind the amendment despite our silent acceptance.

Chairman, next I will talk about the amendment to Part 7, by deleting Division 3. This amendment seeks to delete Division 3 in its entirety, which is about private actions. Chairman, I must make it clear that in my first study report as a greenhorn in the Legislative Council, I advocated that the private action system be given up for the time being for I felt enormous pressure when lobbying the business sector or explaining the basic principles and spirit of competition law to them. It is because the business sector considered that this law would make them incur a lot of lawyer's fees.

Chairman, Mrs Regina IP also mentioned last week that this law would benefit many barristers who would make much more money. But I consider such a statement biased and partial. Chairman, in a business society, it is right that many laws will enable lawyers to earn great fortunes. But they can do so even though there is no competition law. In fact, the Inland Revenue Ordinance, the Town Planning Ordinance, and even some environmental acts in foreign countries are also money-spinners for lawyers. It is mainly because some large corporations consider that if there are loopholes in the laws, these loopholes should be exploited for profiteering. Therefore, under such circumstances, they will, at all costs, hire the most …… I should not say the most outstanding; maybe

the most cunning lawyers will be hired to look for loopholes in the laws in order to make enormous profit by taking advantage of the grey areas of the laws. Under such circumstances, we will see that many lawyers make huge profits. However, the money they earn does not come from SMEs, but big businessmen who engage in profiteering.

Chairman, in my opinion, the remark that private actions will enable lawyers to earn huge profits is rather naïve. Why? Under the competition laws of all countries around the world, the role of private actions is to provide convenience to the general public and small business operators who have suffered losses as a result of contravention of the competition law. This is a channel for them to seek compensation. To them, how can you say that the existence of a right of action will benefit the barristers — let us not mention barristers — to put it simply, to benefit the lawyers? As long as there is a right of action, the people should have the right to initiate proceedings if they have suffered losses and they have the right to claim damages. I consider this the most basic principle. Otherwise, we neither need the laws nor the Judiciary in Hong Kong.

Chairman, the business sector will certainly feel enormous pressure in facing the competition law. They could even lobby and mislead the SMEs into believing that private actions would be detrimental to them. Honestly speaking, even experts in the world will be baffled by this. In the past few years, I have invited many leading experts in competition law in the world to hold seminars on competition law in Hong Kong. The first question they asked upon arrival is whether the business sector has shown the strongest response. In reply, we said, "Yes, almost, but in fact the response of SMEs is also strong." They were extremely surprised by the answer. When they were told that the Government was considering the abolition of the private action system, they asked why as this was the most effective way to help consumers and SMEs. They queried why it would be abolished.

Chairman, in fact, this is a great irony. If this amendment is passed today, compensation cannot be claimed for the loss suffered by the 759 Store, for instance. The store can only pin hope on the Competition Commission that it will fight against the "tiger" it is now facing when the Commission is able to fight against "tigers" one day. Then, it can initiate proceedings in the so-called follow-on action, which will be discussed later on. However, it does not know

how many years or months it has to wait before it has a chance to claim compensation for its loss as result of anti-competitive conduct or contravention of the Competition Ordinance. Is this not a great irony, Chairman? A clause which originally is meant to protect the SMEs and consumers is deleted on the ground that it is opposed by the SMEs. I think this is an unjust and illogical move.

Chairman, when we considered whether the proposal to abolish the private action system be acceptable, there was a reason which made us feel that we should not spend too much time on arguing it here. What is the reason? Frankly speaking, Hong Kong people do not like litigations. I should say the Chinese people. The Chinese people do not like litigations. Let me cite a very simple problem. Is it a little bit unrealistic to tell Auntie Shun in Ngau Tau Kok (an ordinary housewife) who has paid $3 more for a pack of instant noodles to sue the supermarket or the Cheung Kong (Holdings) Limited (CKHL)? Chairman, from this perspective, it is unrealistic. In that case, it will not be a great loss even if the system is given up.

Certainly, Chairman, if the report issued by the Law Reform Commission of Hong Kong (LRC) last week was issued in the year before last, our consideration may be completely different. It is because the LRC recommends that a class action system be implemented in Hong Kong. Hong Kong is very different from foreign countries, such as the United States, the United Kingdom and other places in that there is no class action in Hong Kong. In the absence of class action, how can we advise an ordinary housewife or a small grocery store at a corner in Tin Shui Wai to initiate a legal action to sue a big business operator? However, if a class action system is implemented, the whole concept will change and the LRC recommendation precisely points in this direction. For the protection of consumer interests, we should have class action. Although the LRC has made such a recommendation, we consider the recommendation most conservative, representing just a small step, as small as half an inch, forward because the LRC recommended is that a fund be set up by the Government. In fact, such an approach is not feasible. Honestly, how much money can the Government fish out for this purpose? In particular, as the Government is so stingy and poor at financial management, how much money will it fish out? Even if it is willing to fish out $30 million or $40 million, the money may be all spent in a lawsuit against the CKHL. So, if we want a real change in the legal

proceedings of Hong Kong; if we want to really implement a class action system, we have, to a certain extent, to put it in the hands of private individuals.

However, Chairman, this is not a big problem. In my opinion, if we want to implement a class action system, the provision concerning private actions should not be deleted. Therefore, I solemnly urge Secretary Gregory SO to review this issue in the near future if it is so fortune that this Bill can be passed. From the perspective of social justice, the relevant provision should not be deleted. I hope he will, in his official capacity in the next-term Government, propose an amendment to the Ordinance so as to incorporate a provision concerning private actions into the Ordinance, particularly if the Government accepts the LRC recommendation. To a certain extent, the right to class action should be established in Hong Kong. If so, we should restore the private action system. In this regard, the remark of any SMEs that they are afraid of being sued by large consortia is simply a fallacy, as evidently there are precedents in foreign countries. If a large consortium or business operator which has monopolized the market takes advantage of this system to sue a SME, this is an offence contravening the competition law *per se*.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, we have now stepped into June. There is an old saying that "snow storm in June implies an injustice as appalling as history has ever known". I hope it will not snow today. I went to mourn over the tragic death of Mr LI Wangyang just now, giving my condolences to his family.

Chairman, I will put on a microphone. Chairman, you are very kind to put what I am going to say on record. You are really a conscientious person.

As the old saying goes, "snow storm in June". The family members of LI Wangyang are really pitiable …… Chairman, I know you are going to stop me, so I have to say it quickly.

Regarding the joint debate on the Legislative Council (Amendment) Bill 2012 last time, my feeling is that we were all being spun like a top. I felt very annoyed because no sooner had we debated the amendment than another amendment was raised for discussion. It was so painful abiding by the procedures. Time and again, we have bundled up issues which are simply irrelevant or completely different for a joint debate. I think it may not be an appropriate practice. Discussions were not focused or consistent, making many Members unable to keep abreast of the content of the joint debate. I was the first Member out of step with the debate. Therefore, I wish to improve the situation so that I do not have to keep flipping through the blue booklet.

Let us come back to the question and begin with the issue of private actions. As a Member of the Bills Committee, I am not at all industrious. I am only an average performer. Mr Ronny TONG has just poured out his complaints. I recall that on many occasions, including public hearings, a lot of people put the blame on the lawyers, saying that the purpose of enacting such a law was to do more business — more litigations mean more business. Such inference is not at all unfounded. It is even logical. If this legislation enables more people to take part in litigations and whenever litigation is involved, it is necessary to hire a lawyer to handle the case, then it naturally means more business. Otherwise, the legal consequence will be like mine — self-initiated civil proceedings without legal representation will only end up a total failure.

Insofar as this issue is concerned, I think that the comments of Mr Ronny TONG just now actually make certain sense. If we set up a litigation mechanism, be it called private action, individual action, non-Government action or non-enterprise action, we can define eligibility for invocation of this ordinance to initiate an action. Unless the Bill eventually passed by us is completely ineffective in that it connives at market dominance, or unless the first and second conduct rules are empty shells which allow enterprises to take advantage of their enormous wealth and power to conversely sue other enterprises, there will otherwise be no chance for abuse.

On the other way round, the Competition Commission established pursuant to this ordinance may turn a blind eye to complaints. Chairman, why am I saying this? Because I have proposed in my amendment that members of the

Commission should include representatives from SMEs or the Commission should comprise a ……

Chairman, a point of order.

CHAIRMAN (in Cantonese): What is your point of order?

MR LEUNG KWOK-HUNG (in Cantonese): I am not good at doing headcounts. Would you please do it for me?

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(When the summoning bell was ringing, Mr James TO stood up)

MR JAMES TO (in Cantonese): As it is now 9.55 pm, will the voting be postponed until tomorrow or what?

CHAIRMAN (in Cantonese): Mr James TO, I cannot hear you clearly. Will you please put on the microphone.

MR JAMES TO (in Cantonese): Chairman, the clock shows that it is now 9.55 pm or five minutes to 10 pm. Would the meeting be suspended immediately until tomorrow?

CHAIRMAN (in Cantonese): The meeting will be suspended after I have made an announcement to that effect. It will not necessarily be suspended at 10 pm. As a Member has requested a headcount, the bell will be rung for 15 minutes. If a quorum is not present after 15 minutes, I will announce that the meeting is aborted.

MR JAMES TO (in Cantonese): Yes. I see.

(While the summoning bell was ringing, Mr IP Wai-ming stood up)

MR IP WAI-MING (in Cantonese): Chairman.

CHAIRMAN (in Cantonese): Mr IP Wai-ming, what is your point?

MR IP WAI-MING (in Cantonese): Though the summoning bell is ringing, could the Secretariat put this on record. Mr LEUNG Kwok-hung, who requested a headcount, has left the Chamber. I wish to put this on record.

CHAIRMAN (in Cantonese): As I said before, the Rules of Procedure does not specify that the Member who requests a headcount is required to stay in the Chamber.

MR IP WAI-MING (in Cantonese): Chairman, I know. You explained it on the last occasion. I just want to put the Member's conduct on record.

CHAIRMAN (in Cantonese): As a quorum is not present in the Chamber, the meeting is not in progress.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): A quorum is present.

MR IP WAI-MING (in Cantonese): Chairman, as the meeting has resumed, can my words be put on record? Mr LEUNG Kwok-hung left the Chamber after requesting a headcount.

CHAIRMAN (in Cantonese): Mr IP, your speech is out of order. If you wish to speak, you can raise your hand and wait for your turn.

(Mr LEUNG Kwok-hung stood up to indicate his wish to continue with his speech)

SUSPENSION OF MEETING

CHAIRMAN (in Cantonese): It is two minutes to 10 pm. Mr LEUNG Kwok-hung, you may not be able to finish your speech in two minutes. Therefore, I now suspend the meeting until 2.30 pm tomorrow.

Suspended accordingly at two minutes to Ten o'clock.

Annex I

Competition Bill

Committee Stage

Amendments moved by the Secretary for Commerce and Economic Development

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

the Communications Authority Ordinance (Cap. 616);

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

"competition authority" (競爭事務當局) means—

(*a*) the Commission; or

(*b*) the Communications Authority;

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

(*a*) fixing, maintaining, increasing or controlling the price for the supply of goods or services;

(*b*) allocating sales, territories, customers or markets for the production or supply of goods or services;

(*c*) fixing, maintaining, controlling, preventing, limiting or eliminating the production or supply of goods or services;

(*d*) bid-rigging;

Note—

See also subsection (2).".

2 By adding—

"(2) For the purposes of the definition of "serious anti-competitive conduct"—

"bid-rigging" (圍標) means—

(*a*) an agreement—

(i) that is made between or among 2 or more undertakings whereby one or more of those undertakings agrees or undertakes not to submit a bid or tender in response to a call or request for bids or tenders, or agrees or undertakes to withdraw a bid or tender submitted in response to such a call or request; and

(ii) that is not made known to the person calling for or requesting bids or tenders at or before the time when a bid or tender is submitted or withdrawn by a party to the agreement or by an entity controlled by any one or more of the parties to the agreement; or

(*b*) a submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by an agreement—

(i) that is made between or among 2 or more undertakings; and

(ii) that is not made known to the person calling for or requesting bids or tenders at or before the time when a bid or tender is submitted or withdrawn by a party to the agreement or by an entity

controlled by any one or more of the parties to the agreement;

"goods" (貨品) includes real property;

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

"supply" (供應)—

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

(*b*) in relation to services, means sell, rent or otherwise provide the services or offer so to provide the services.

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

6 By deleting subclause (2).

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

7 By adding—

"(3) If an agreement, concerted practice or decision has more than one effect, it has the effect of preventing, restricting or distorting competition under this Ordinance if one of its effects is to prevent, restrict or distort competition.".

10 By deleting subclause (1) and substituting—

"(1) Before making a decision on an application

made under section 9, the Commission must—

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

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

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

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

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

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

14 By adding—

"(2A) The notice referred to in subsection (2) must be published—

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

(*b*) in any other manner the Commission

considers appropriate.".

14(3) By deleting "a notice" and substituting "the notice published".

14(3) By deleting "given" and substituting "published".

14(4)(*a*) By deleting "given" and substituting "published".

16 By deleting subclause (1) and substituting—

"(1) Before issuing a block exemption order, the Commission must—

(*a*) in order to bring the proposed block exemption order to the attention of those the Commission considers likely to be affected by it, publish notice of the proposed block exemption order—

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

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

(*b*) consider any representations about the proposed block exemption order that are made to the Commission.".

20 By deleting subclause (2) and substituting—

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

(*a*) in order to bring the proposed variation or revocation to the attention of those the Commission considers likely to be

affected by it, publish notice of the proposed variation or revocation—

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

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

(*b*) consider any representations about the proposed variation or revocation that are made to the Commission.".

21 By adding—

"(2A) Without limiting the matters that may be taken into account in determining whether an undertaking has a substantial degree of market power in a market, the following matters may be taken into consideration in any such determination—

(*a*) the market share of the undertaking;

(*b*) the undertaking's power to make pricing and other decisions;

(*c*) any barriers to entry to competitors into the relevant market; and

(*d*) any other relevant matters specified in the guidelines issued under section 35 for the purposes of this paragraph.".

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

22 By adding—

"(3) If conduct has more than one effect, it has the effect of preventing, restricting or distorting competition under

this Ordinance if one of its effects is to prevent, restrict or distort competition.".

25 By deleting subclause (1) and substituting—

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

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

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

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

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

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

27(2) In the Chinese text, by deleting "凡" and substituting "如".

29(2) In the Chinese text, by deleting "取消決定" and substituting "取消任何決定".

29(2)(*a*) By deleting "give notice in writing in any manner it considers appropriate for bringing the proposed rescission to the attention of

those undertakings it considers likely to be affected by the proposed rescission" and substituting "in order to bring the proposed rescission to the attention of those undertakings the Commission considers likely to be affected by it, publish notice of the proposed rescission".

29 By adding—

"(2A) The notice referred to in subsection (2) must be published—

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

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

29(3) By deleting "a notice" and substituting "the notice published".

29(3) By deleting "given" and substituting "published".

29(4)(*a*) By deleting "given" and substituting "published".

29(7) In the Chinese text, by adding "的" before "生效".

33(2) In the Chinese text, by adding "藉決議通過" before "修訂該命令".

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

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

34 By deleting subclause (3) and substituting—

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

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

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

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

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

35 By deleting subclause (5) and substituting—

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

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

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

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

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

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

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

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

tending to establish or negate the matter.

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

39(1)(*c*) By adding "or the Tribunal" before "has".

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

45 By deleting subclause (2) and substituting—

"(2) No statement made by a person—

(*a*) in giving any explanation or further particulars about a document; or

(*b*) in answering any question,

under this Division is admissible against that person in proceedings referred to in subsection (3) unless, in the proceedings, evidence relating to the statement is adduced, or a question relating to it is asked, by that person or on that person's behalf.".

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

48(1) By adding "authorizing a person specified in the warrant, and any other persons who may be necessary to assist in the execution of the warrant," after "warrant".

48 By adding—

"(2) A warrant under subsection (1) may be issued subject to any conditions specified in it that apply to the warrant itself or to any further authorization under it (whether granted under its terms or any provision of this Ordinance).".

50(1) By deleting "named" and substituting "specified".

50 By deleting subclauses (2) and (3).

53(1)(*a*) In the Chinese text, by deleting "後果" and substituting "實情".

56(2) In the Chinese text, by deleting "並非" and substituting "在其他情況下".

56 In the Chinese text, by deleting subclause (3) and substituting—

"(3) 在競委會發給上述核證副本之前，該會須在該會認為適當的時間及地點，容許在其他情況下對該文件享有管有權的人或該人所授權的人，查閱和複製該文件，或摘錄其內容。".

56(4) In the Chinese text, by deleting "法庭" and substituting "法院".

New By adding—

"**57A. Legal professional privilege**

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

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

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

58 By deleting subclause (4) and substituting—

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

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

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

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

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

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

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

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

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

59 By adding—

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

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

63 By deleting subclause (3) and substituting—

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

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

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

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

66 By deleting subclause (1) and substituting—

"(1) Subsection (2) applies where—

(*a*) the Commission has reasonable cause to believe that—

(i) a contravention of the first conduct rule has occurred and the contravention involves serious anti-competitive conduct; or

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

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

66(3) By deleting paragraph (*a*).

66 By adding—

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

77 By deleting everything after "the infringement notice" and substituting—

"—

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

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

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

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

78 By deleting the definition of "Commission".

80 By deleting subclause (3) and substituting—

"(3) A notice under subsection (2) must specify the period within which representations may be made to the Commission about the proposed termination.

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

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

New In Part 4, by adding—

"**Division 4—Warning Notices**

80A. Warning notices

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

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

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

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

(2) A warning notice must—

(*a*) describe the conduct (the "contravening conduct") that is alleged to constitute the contravention;

(*b*) identify the undertaking (the "contravening undertaking") that has engaged in the contravening conduct;

(*c*) identify the evidence or other materials that the Commission relies on in support of its allegations;

(*d*) state—

(i) that the Commission requires the contravening undertaking to cease the contravening conduct within the period (the "warning period") specified in the notice, and not to repeat that conduct after the warning period;

(ii) that, if the contravening conduct continues after the expiry of the warning period, the Commission

may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct; and

(iii) that, if the contravening undertaking repeats the contravening conduct after the expiry of the warning period, the Commission may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct and the repeated conduct; and

(*e*) indicate the manner in which the contravening undertaking may cease the contravening conduct.

(3) In determining the warning period, the Commission must have regard to the amount of time which the contravening undertaking is likely to require to cease the contravening conduct.

(4) After the expiry of the warning period—

(*a*) if the Commission has reasonable cause to believe that the contravening conduct continues after the expiry, the Commission may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct; and

(*b*) if the Commission has reasonable cause to believe that the contravening

undertaking repeats the contravening conduct after the expiry, the Commission may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct and the repeated conduct.

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

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

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

81 In the definition of "reviewable determination", by adding—

"(*ba*) a decision relating to the issue of a block exemption order, made by the Commission under section 15;

(*bb*) a decision relating to the variation or revocation of a block exemption order, made by the Commission under section 20;".

84 By deleting subclause (3) and substituting—

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

(*a*) determine the question stated;

(*b*) amend the case or require the Tribunal to amend the case in any manner the Court specifies; or

(*c*) remit the case to the Tribunal for reconsideration in the light of the decision of the Court.".

91 By deleting subclause (3) and substituting—

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

(*a*) subject to paragraph (*b*), 10% of the turnover of the undertaking concerned for each year in which the contravention occurred; or

(*b*) if the contravention occurred in more than 3 years, 10% of the turnover of the undertaking concerned for the 3 years in which the contravention occurred that saw the highest, second highest and third highest turnover.".

91 By deleting subclause (4) and substituting—

"(4) In this section—

"turnover" (營業額) means the total gross revenues of an undertaking obtained in Hong Kong;

"year" (年度) means the financial year of an undertaking or, if the undertaking does not have a financial year, a calendar year.".

92(3) In the Chinese text, by deleting "請。" and substituting "請，".

94(1) In the Chinese text, by deleting "開支或" and substituting "開支

及".

99(2)(*b*) By adding "or provisional liquidator" after "liquidator".

101(2)(*c*) In the Chinese text, by deleting "該人" and substituting "某人".

104 In the definition of "follow-on action", by deleting "108(1);" and substituting "108(1).".

104 By deleting the definition of "stand-alone action".

106 By deleting everything after "if" and substituting—

"—

(*a*) the cause of action is the defendant's contravention, or involvement in a contravention, of a conduct rule; or

(*b*) the proceedings are founded on more than one cause of action and any of the causes of action is the defendant's contravention, or involvement in a contravention, of a conduct rule.".

108 By deleting subclauses (2) and (3) and substituting—

"(2) Subject to section 115, a claim to which this section applies may only be made in proceedings brought in the Tribunal, whether or not the cause of action is solely the defendant's contravention, or involvement in a contravention, of a conduct rule.".

108(4) By adding—

"(*ab*) the Court of First Instance has decided, in any proceedings transferred to it by the Tribunal under section 115A(3), that the act is a contravention of a conduct rule;".

108(4)(*b*) By adding "or the Court of First Instance" after "Tribunal".

108(4)(*c*) By deleting "and" and substituting "or".

109(1) By deleting paragraph (*a*) and substituting—

"(*a*) in the case of a decision of the Tribunal, the period during which an appeal may be made to the Court of Appeal under section 153;

(*ab*) in the case of a decision of the Court of First Instance, the period during which an appeal may be made to the Court of Appeal; and".

109(1) By adding ", (*ab*)" after "paragraph (*a*)".

109 By deleting subclause (2) and substituting—

"(2) Despite subsection (1), the Court of First Instance or the Tribunal may, on the application of the party seeking to bring the proceedings, permit proceedings for a follow-on action to be brought within any period specified in subsection (1).".

Part 7 By deleting Division 3.

114 By deleting the clause.

115 By deleting the clause and substituting—

"**115. Transfer of proceedings from Court of First Instance to Tribunal**

(1) Subject to subsection (2), the Court of First Instance must transfer to the Tribunal so much of the proceedings before the Court that are within the jurisdiction of the Tribunal.

(2) Subsection (1) does not apply to any proceedings that—

(*a*) are within the jurisdiction of the Tribunal under section 141(1)(*f*); and

(*b*) the Court of First Instance considers should not, in the interests of justice, be transferred to the Tribunal.

(3) Without limiting subsection (1) but subject to section 115B(2), if, in any proceedings before the Court of First Instance, a contravention, or involvement in a contravention, of a conduct rule is alleged as a defence, the Court must, in respect of the allegation, transfer to the Tribunal so much of those proceedings that are within the jurisdiction of the Tribunal.

(4) The practice and procedure of the Tribunal apply to the proceedings transferred by the Court of First Instance under subsection (1) or (3).

115A. Transfer of proceedings from Tribunal to Court of First Instance

(1) The Tribunal must transfer to the Court of First Instance so much of the proceedings brought in the Tribunal that are within the jurisdiction of the Court but are not within the jurisdiction of the Tribunal.

(2) Subject to subsection (1), the Tribunal may transfer to the Court of First Instance any proceedings brought in the Tribunal but only if—

(*a*) those proceedings are within the jurisdiction of the Tribunal under section 141(1)(*f*); and

(*b*) the Tribunal considers that those proceedings should, in the interests of justice, be transferred to the Court.

(3) If the Court of First Instance transfers any proceedings to the Tribunal under section 115(3), the Tribunal may transfer back to the Court so much of those proceedings that the Tribunal considers should, in the interests of justice, be transferred back to the Court.

(4) The practice and procedure of the Court of First Instance apply to the proceedings transferred by the Tribunal under subsection (1), (2) or (3).

115B. No further transfer of proceedings from Court of First Instance to Tribunal

(1) If the Tribunal transfers any proceedings to the Court of First Instance under section 115A(2), the Court must not transfer back those proceedings to the Tribunal.

(2) If the Tribunal transfers any proceedings to the Court of First Instance under section 115A(3)—

(*a*) section 115(3) does not apply to those proceedings; and

(*b*) the Court must not transfer back those proceedings to the Tribunal.

115C. No further transfer of proceedings from Tribunal to Court of First Instance

If the Court of First Instance transfers any proceedings to the Tribunal under section 115(1), the Tribunal must not transfer back those proceedings to the Court.".

116 By deleting subclauses (2), (3) and (4) and substituting—

"(2) If the Tribunal makes an order transferring proceedings to the Court of First Instance under section 115A, it may make an order for costs prior to the transfer and of the transfer.".

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

117 By deleting subclause (1) and substituting—

"(1) In any proceedings before the Court of First Instance or the Tribunal in which a contravention, or involvement in a contravention, of a conduct rule is alleged, the Court or the Tribunal may, either of its own motion or on application by a party to the proceedings, refer the alleged contravention or alleged involvement to the Commission for investigation under this Ordinance.".

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

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

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

(2) Subject to subsection (2A), in such proceedings the Court of First Instance or the Tribunal (as the case requires) is bound by an earlier decision of the Court or Tribunal that the act in question is a contravention, or involvement in a contravention, of the conduct rule.

(2A) Subsection (2) does not apply in relation to a decision of the Court of First Instance or the Tribunal until the period specified in subsection (3) has expired.".

118(3) By deleting "(2)" and substituting "(2A)".

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

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

"(1) This section applies to proceedings involving an alleged contravention, or alleged involvement in a contravention, of a conduct rule, before the specified Court or the Tribunal, that are brought by a person other than the Commission.

(2) The Commission may, with the leave of the specified Court or the Tribunal, and subject to any conditions imposed by the specified Court or the Tribunal, intervene in any such proceedings.".

119 By adding—

"(5) In this section—

"specified Court" (指明法院) means—

(*a*) the Court of Final Appeal;

(*b*) the Court of Appeal; or

(*c*) the Court of First Instance.".

120 By deleting the clause and substituting—

"**120. Commission may participate in proceedings**

(1) The Commission may, with the leave of or at the invitation of the specified Court or the Tribunal (as the case requires), participate in proceedings before the specified Court or the Tribunal involving an alleged contravention, or alleged involvement in a contravention, of a conduct rule that have been brought by another person and, in particular may—

(*a*) make written submissions to the specified Court or the Tribunal; or

(*b*) apply for, or join an application for, the adjournment of the proceedings pending the completion of the Commission's investigation into the alleged contravention or involvement that is in issue in the proceedings.

(2) In this section—

"specified Court" (指明法院) means—

(*a*) the Court of Final Appeal;

(*b*) the Court of Appeal; or

(*c*) the Court of First Instance.".

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

"(*d*) the Communications Authority;

(*e*) any person who is or was a member of the Communications Authority;

(*f*) any person who is or was a member of a committee of

the Communications Authority, appointed under section 17 of the Communications Authority Ordinance (Cap. 616);

(*g*) any person who is or was a public officer serving in the Office of the Communications Authority;

(*h*) any person who is or was an employee or agent of the Office of the Communications Authority; or".

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

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

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

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

141(1) In paragraph (*a*), by adding ", or alleged involvements in contraventions," after "contraventions".

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

141(1) By adding—

"(*ca*) allegations of contraventions, or involvements in contraventions, of the conduct rules raised as a defence;".

141(1) By deleting paragraph (*f*) and substituting—

"(*f*) any matter related to a matter referred to in paragraph

(*a*), (*b*), (*c*), (*ca*), (*d*) or (*e*) if the matters arise out of the same or substantially the same facts.".

142(2)(*a*) By deleting "in civil or criminal proceedings".

149(1) By deleting everything before paragraph (*a*) and substituting—

"(1) A finding of any fact by the Court of First Instance in any proceedings transferred to it by the Tribunal under section 115A(3), which is relevant to an issue arising in any other proceedings, either in the Court or in the Tribunal, relating to a contravention, or involvement in a contravention, of a conduct rule, is evidence of that fact in those other proceedings if—".

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

"(1) Subject to subsection (2) and section 153A, an appeal lies as of right to the Court of Appeal against any decision (including a decision as to the amount of any compensatory sanction or pecuniary penalty), determination or order of the Tribunal made under this Ordinance.

(2) An appeal does not lie—

(*a*) against an order of the Tribunal allowing an extension of time for appealing against a decision, determination or order of the Tribunal;

(*b*) against a decision, determination or order of the Tribunal if it is provided by any Ordinance or by the rules of the Tribunal made under section 156 that the decision, determination or order is final; or

(*c*) without the leave of the Court of Appeal

or the Tribunal, against an order of the Tribunal made with the consent of the parties or relating only to costs that are left to the discretion of the Tribunal.

(3) Rules of the Tribunal made under section 156 may provide for decisions, determinations or orders of any prescribed description to be treated for any prescribed purpose connected with appeals to the Court of Appeal as final or interlocutory.

(3A) An appeal does not lie against a decision of the Court of Appeal as to whether a decision, determination or order of the Tribunal is, for any purpose connected with an appeal to the Court, final or interlocutory.".

New In Part 10, in Division 3, by adding—

"**153A. Leave to appeal required for interlocutory appeals**

(1) Except as provided by the rules of the Tribunal made under section 156, an appeal does not lie to the Court of Appeal against any interlocutory decision, determination or order of the Tribunal unless leave to appeal has been granted by the Court of Appeal or the Tribunal.

(2) Rules of the Tribunal made under section 156 may specify an interlocutory decision, determination or order of any prescribed description as being an interlocutory decision, determination or order to which subsection (1) does not apply and accordingly an appeal lies as of right against the decision, determination or order.

(3) Leave to appeal for the purpose of subsection (1) may be granted—

(*a*) in respect of a particular issue arising out of the interlocutory decision, determination or order; and

(*b*) subject to any conditions that the Court of Appeal or the Tribunal considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(4) Leave to appeal may only be granted under subsection (1) if the Court of Appeal or the Tribunal is satisfied that—

(*a*) the appeal has a reasonable prospect of success; or

(*b*) there is some other reason in the interests of justice why the appeal should be heard.".

155(3) By deleting "in any criminal or civil proceedings".

157 By deleting the clause.

158 In the heading, by deleting "**Telecommunications**" and substituting "**Communications**".

158(1) By deleting "Telecommunications Authority" and substituting "Communications Authority".

158(1) By deleting paragraphs (*a*) and (*b*) and substituting—

"(*a*) licensees under the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562);

(*b*) persons who, although not such licensees, are persons

whose activities require them to be licensed under the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562); or".

158(2) By deleting "Telecommunications" and substituting "Communications".

159 By deleting the clause.

160 By deleting the clause and substituting—

"**160. Transfer of competition matter between competition authorities**

(1) Where one competition authority is performing a function in relation to a competition matter and another competition authority also has jurisdiction to perform functions in relation to that matter, the 2 competition authorities may agree that the matter be transferred to and be dealt with by one of them.

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

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

161(2) By deleting "may" and substituting "must".

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

161 By adding—

"(3A) Before signing any Memorandum of Understanding, or any amendment to it, under this section, the Commission and the Communications Authority must consult the Legislative Council.".

161 By deleting the subclause (4) and substituting—

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

(5) The Commission and the Communications Authority must make available copies of any Memorandum of Understanding prepared and signed under this section and of all amendments made to it—

(*a*) at their offices during ordinary business hours;

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

(*c*) in any other manner they consider appropriate.

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

New By adding—

"**162A. Determination of turnover of undertaking**

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

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

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

(*a*) specify a period as the turnover period of an undertaking for the purpose of section 5(4) or 6(3) of Schedule 1;

(*b*) provide for different ways for the determination of the turnover of an undertaking obtained in Hong Kong or outside Hong Kong; and

(*c*) provide for different ways for the determination of the turnover of an undertaking in respect of different periods, including—

(i) a calendar year;

(ii) a financial year; and

(iii) a period specified as the turnover period of the undertaking under paragraph (*a*).".

166(1)(*d*)	By deleting subparagraph (ii) and substituting— "(ii) by sending it by post in a letter addressed to the undertaking at any place in Hong Kong at which the undertaking carries on business or, if the undertaking's address is unknown, addressed to the undertaking's last known place of business;".
167(1)(*b*)(ii)	By adding "this Part or" after "under".
167(1)(*b*)(iii)	By deleting "required" and substituting "ordered".
167(3)	In the definition of "officer", in paragraph (*a*), by adding "company" before "secretary".
172(3)	In the Chinese text, by deleting "或" and substituting "及".
174(1)	By adding "company" before "secretary" (wherever appearing).
176(1)	By deleting "Authority" and substituting "(Miscellaneous Provisions)".
176(2)	By deleting "Authority" and substituting "(Miscellaneous Provisions)".
176(2)	In the Chinese text, by deleting "或保留" and substituting "及保留".
176(3)(*b*)	By deleting "Authority" and substituting "(Miscellaneous Provisions)".

176(5)(*b*) By deleting "that date" and substituting "the date on which the regulations are published in the Gazette".

Schedule 1 By deleting "& 36]" and substituting ", 36 & 162A]".

Schedule 1, section 1 By deleting paragraph (*a*) and substituting—

"(*a*) contributes to—

(i) improving production or distribution; or

(ii) promoting technical or economic progress,

while allowing consumers a fair share of the resulting benefit;".

Schedule 1 By adding—

"4. **Mergers**

(1) To the extent to which an agreement (either on its own or when taken together with another agreement) results in, or if carried out would result in, a merger, the first conduct rule does not apply to the agreement.

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

5. **Agreements of lesser significance**

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

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

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

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

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

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

(*a*) if the undertaking has a financial year, the financial year of the undertaking that ends in the preceding calendar year; or

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

(4) The turnover period of an undertaking is the period specified as such for the purpose of this subsection in the regulations made under section 162A(2) if—

(*a*) for an undertaking that has a financial year—

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

(ii) the financial year of the undertaking that ends in the

preceding calendar year is less than 12 months; or

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

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

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

(5) In this section—

"preceding calendar year" (對上公曆年) means the calendar year preceding the calendar year mentioned in subsection (1)(*a*), (*b*) or (*c*);

"turnover" (營業額)—

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

(*b*) in relation to an association of undertakings, means the total gross revenues of all the members of the association whether obtained in Hong Kong or outside Hong Kong.

6. **Conduct of lesser significance**

(1) The second conduct rule does not apply to conduct engaged in by an undertaking the turnover of which

does not exceed $40,000,000 for the turnover period.

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

(*a*) if the undertaking has a financial year, the financial year of the undertaking that ends in the preceding calendar year; or

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

(3) The turnover period of an undertaking is the period specified as such for the purpose of this subsection in the regulations made under section 162A(2) if—

(*a*) for an undertaking that has a financial year—

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

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

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

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

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

(4) In this section—

"preceding calendar year" (對上公曆年) means the calendar year preceding the calendar year in which the conduct mentioned in subsection (1) is engaged in;

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

Schedule 2, section 1(*a*) — By deleting "or".

Schedule 2, section 1(*b*) — By deleting "61." and substituting "61; or".

Schedule 2, section 1 — By adding—

"(*c*) accept a new commitment in substitution for such a commitment under section 61.".

Schedule 2, section 4 — By deleting everything after "or variation" and substituting—

"—

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

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

Schedule 2, section 5 — By deleting paragraph (*b*) and substituting—

"(*b*) publishing the notice—

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

(ii) in any other manner the Commission considers appropriate,

for the purpose of bringing the matter to which the

notice relates to the attention of those the Commission considers likely to be affected by it.".

Schedule 2, section 9

By deleting everything after "withdrawal" and substituting—

"—

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

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

Schedule 2, section 10

By deleting paragraph (*b*) and substituting—

"(*b*) publishing the notice—

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

(ii) in any other manner the Commission considers appropriate,

for the purpose of bringing the matter to which the notice relates to the attention of those the Commission considers likely to be affected by it.".

Schedule 2, section 12(2)(*b*)

By deleting "and".

Schedule 2, section 12(2)

By adding—

"(*ba*) any other facts that the Commission considers to be relevant to the proposed release; and".

Schedule 2, section 14

By deleting paragraph (*a*) and substituting—

"(*a*) publish the release—

(i) through the Internet or a similar electronic

network; and

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

Schedule 2, section 14(*b*) — In the English text, by deleting "the person who made the commitment" and substituting "that person".

Schedule 2, section 15 — In the English text, by deleting "is" and substituting "must be".

Schedule 2, section 15 — By deleting paragraph (*b*) and substituting—

"(*b*) publishing the notice—

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

(ii) in any other manner the Commission considers appropriate,

for the purpose of bringing the matter to which the notice relates to the attention of those the Commission considers likely to be affected by it.".

Schedule 3 — By deleting ", 110 & 113]" and substituting "& 110]".

Schedule 3, section 2(*b*) — In the Chinese text, by deleting "須" and substituting "可".

Schedule 5, section 2(1) — By adding "and not more than 16" after "5".

Schedule 5, section 5(1)(*d*) — In the Chinese text, by deleting "或管理" and substituting "及管理".

Schedule 5, section 5(3) — In the definition of "officer", in paragraph (*a*), by adding "company" before "secretary".

Schedule 5, section 7(2) — By adding "the remainder of" after "beyond".

Schedule 5, section 13(2) — By deleting "For the purpose of determining the quorum, a" and substituting "A".

Schedule 5, section 18(*d*) — By deleting "the merit of".

Schedule 5, section 27(2)(*c*) — In the Chinese text, by deleting "及文件" and substituting "或文件".

Schedule 5, section 27 — By adding—

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

Schedule 5, section 28(3) — By deleting "one" and substituting "a member of the Commission who is also a".

Schedule 5 — By adding—

"PART 7A

REGISTER AND DISCLOSURE OF INTERESTS

28A. **Register of interest**

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

subsection (2)—

(*a*) in the case of a member of the Commission, on the member's first appointment to the Commission;

(*b*) in the case of a member of the committee who is not also a member of the Commission, on the member's first appointment to the committee;

(*c*) at the beginning of each calendar year after the member's appointment;

(*d*) on becoming aware of the existence of an interest not previously disclosed under this subsection; and

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

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

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

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

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

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

(4) If a person makes a disclosure as required by subsection (1), the Commission must cause the person's name

and the particulars of the disclosure to be recorded in the register, and if a further disclosure is made, the Commission must cause the particulars of the further disclosure to be recorded in the register.

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

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

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

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

28B. **Disclosure of interests**

(1) If a member of the Commission has—

(*a*) a pecuniary interest, whether direct or indirect; or

(*b*) a personal interest greater than that which the member has as a member of the general public,

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

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

(*a*) the disclosure must be recorded in the minutes;

(*b*) if the disclosure is made by the member presiding, the member must vacate the chair during the discussion;

(*c*) the member (including one who has

vacated the chair under paragraph (*b*)) must, if so required by the majority of the other members present, withdraw from the meeting during the discussion and must not in any case, except as otherwise determined by the majority of the other members present, vote on any resolution concerning the matter under the discussion or be counted for the purpose of establishing the existence of a quorum.

(3) When a matter is being dealt with by way of the circulation of written resolutions under section 17 of this Schedule, and a member of the Commission has—

(*a*) a pecuniary interest in the matter, whether direct or indirect; or

(*b*) a personal interest in the matter greater than that which the member has as a member of the general public,

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

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

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

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

(7) Subsections (1), (2) and (6) apply to a member of a committee established by the Commission, as if any reference to the Commission in subsections (1) and (6) were a reference to the committee.".

Schedule 5, section 29(2)

By adding—

"(*ba*) the power to vary or revoke a block exemption order under section 20;

(*bb*) the power to issue an infringement notice under section 66;".

Schedule 5, section 29(2)

By adding—

"(*ca*) the duty to give a copy of its annual report, its statement of accounts, and the auditor's report on the statement of accounts, to the Chief Executive under section 26 of this Schedule;".

Schedule 5, section 29(2)

By adding—

"(*la*) the power to appeal to the courts;".

Schedule 6

In the heading, by deleting "MAY" and substituting "MUST".

Schedule 6, section 4

In the Chinese text, by deleting "某些特定事宜或某類" and substituting "特定事宜或特定類別".

Schedule 6, section 6

By deleting "other parties" and substituting "the other party".

Schedule 7, section 3(4)

In the Chinese text, by deleting "自動" and substituting "自主".

Schedule 7, section 6 — In the heading, by deleting "**to**" and substituting "**that may**".

Schedule 7, section 10(3) — In the Chinese text, by deleting "屆會期" and substituting "會期".

Schedule 7, section 10(5) — In the Chinese text, by deleting "屆會期" and substituting "會期".

Schedule 7, section 11(1)(*a*) — In the English text, by deleting "carries" and substituting "has carried".

Schedule 7, section 12 — By deleting subsection (1) and substituting—

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

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

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

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

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

Schedule 7, section 14 — In the Chinese text, by deleting "採取任何行動" and substituting

"提出任何訴訟".

Schedule 7, section 15(2)

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

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

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

Schedule 7, section 15

By adding—

"(2A) The notice referred to in subsection (2) must be published—

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

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

Schedule 7, section 15(6)

In the Chinese text, by deleting "作何" and substituting "任何".

Schedule 7, section 16

By deleting subsection (3) and substituting—

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

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

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

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

Schedule 7, section 17(4)

By adding "the Legislative Council and" after "consult".

Schedule 7, section 17

By deleting subsection (5) and substituting—

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

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

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

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

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

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

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

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

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

Schedule 8

In the Chinese text, in the heading, by deleting "相關" and

substituting "有關".

Schedule 8, section 5 — By renumbering the section as section 5(1).

Schedule 8, section 5 — By adding—

"(2) Schedule 1 is amended by adding—

"Registrar of the Competition Tribunal

Senior Deputy Registrar, Competition Tribunal

Deputy Registrar, Competition Tribunal"

after—

"Assistant Registrar, High Court".".

Schedule 8 — By deleting section 7.

Schedule 8 — By deleting Part 5.

Schedule 8, section 23 — By deleting "115" and substituting "123".

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

Schedule 8 — By deleting section 24 and substituting—

"24. **Interpretation**

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

(2) Section 2 is amended by adding—

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

Schedule 8, section 34(2)

By deleting "Broadcasting".

Schedule 8

By adding—

"PART 10

AMENDMENTS TO COMMUNICATIONS AUTHORITY ORDINANCE

39. **Functions of Authority**

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

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

Schedule 9, section 1

In the Chinese text, in the definition of "原有《廣播條例》", by deleting "章)。" and substituting "章);".

Schedule 9, section 1

By deleting the definition of "pre-amended Broadcasting Authority Ordinance".

Schedule 9, section 1

By adding—

""pre-amended Broadcasting (Miscellaneous Provisions) Ordinance" (原有《廣播(雜項條文)條例》) means the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) in force immediately before the commencement date;".

Schedule 9, section 2	By deleting "Authority" and substituting "(Miscellaneous Provisions)".
Schedule 9, section 3(2)(*a*)	In the Chinese text, by deleting "發生" (wherever appearing) and substituting "作出".
Schedule 9, section 3(8)	By deleting "Telecommunications Authority" (wherever appearing) and substituting "Communications Authority".
Schedule 9, section 3	By deleting subsection (9).
Schedule 9, section 4	In the heading, by deleting "**Authority**" and substituting "**(Miscellaneous Provisions)**".
Schedule 9, section 4(1)	In the definition of "pre-amended Ordinance", in paragraph (*a*), by deleting "Authority" and substituting "(Miscellaneous Provisions)".
Schedule 9, section 4(2)(*a*)	In the Chinese text, by deleting "發生" (wherever appearing) and substituting "作出".
Schedule 9, section 4(2)	In the Chinese text, by deleting "訂立" and substituting "制定".
Schedule 9, section 4(3)	In the Chinese text, by adding "繼續" before "適用".
Schedule 9, section 4(3)	In the Chinese text, by deleting "訂立" and substituting "制定".

Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Constitutional and Mainland Affairs to Mr Ronny TONG's supplementary question to Question 2

As regards the request for sample checking and inquiry letters on the verification of residential addresses of registered electors, enclosed are five sample letters for Members' reference.

Annex A — the sample checking letter to electors selected under random checking;

Annex B — the sample inquiry letter to electors selected under random checking who have not replied the checking letters;

Annex C — the sample inquiry letter issued according to the results of verification of electors' registered addresses through government departments;

Annex D — the sample inquiry letter to electors whose District Council (second) functional constituency voter registration letters were returned; and

Annex E — the sample inquiry letter to electors involved in suspected false addresses cases after the 2011 District Council Election.

Annex A

選舉事務處

香港灣仔愛群道 32 號
愛群商業大廈 10 樓愛群商業大廈 10 樓

REGISTRATION AND ELECTORAL OFFICE

10/F, Guardian House
32 Oi Kwan Road
Wan Chai
Hong Kong

本函檔號 OUR REF.: (2) IN REO GC/52/1/2C (EC-2011FR-«DC»«SEQ»)
«PID» «BARCODE»
來函檔號 YOUR REF.: –

圖文傳真 Fax: 2891 4804
電 話 Tel.: «Tel»
網 址 Web Site: http://www.reo.gov.hk

«ENG_NAME»«CHN_NAME»
«MADDR_1»
«MADDR_2»
«MADDR_3»
«MADDR_4»
«MADDR_5»

15 February 2012

Dear Sir / Madam,

Sample Checks on Registered Addresses

Registered Address: «CUR_ADDR»

To maintain the accuracy of registration particulars of electors, this Office is conducting a sample checks on the voter registration.

According to section 28 of the Legislative Council Ordinance (Cap. 542), the residential address notified by any person to the Electoral Registration Officer must be the person's only or principal residence in Hong Kong. According to the section, a reference to a person's only or principal residence in Hong Kong is a reference to a dwelling-place in Hong Kong at which the person resides and which constitutes the person's sole or main home. According to our record, the above-mentioned address is your registered address as recorded in the current final register of electors for the geographical constituencies.

In order to confirm that you still reside at the above-mentioned address, please complete the attached reply slip. You are also required to provide original or photocopy of proof of present residential address which is issued not more than 3 months from the issuing date of this letter (e.g. water/electricity/gas bill). For electors who do not have address proof, our Office will also accept the address proof of other person who lives with the elector but the elector must attach a declaration signed by the said person certifying that they live in the same address. The elector can also certify that he lives at the registered address by providing a statutory declaration made before a Commissioner for Oaths/a solicitor/a Justice of the Peace. Please send the completed reply slip and the address proof to our Office by post or by fax (fax number: 2891 4804) **within two weeks from the issuing date of this letter**.

If you have already moved out of the above-mentioned registered address, please provide the latest principal residential address in the reply slip. You are also required to provide original or photocopy of proof of present residential address which is issued not more than 3 months from the issuing date of this letter (e.g. water/electricity/gas bill). For electors who do not have address proof, our Office will also accept the address proof of other person who lives with the elector but the elector must attach a declaration signed by the said person certifying that they live in the same address. The elector can also certify that he lives at the registered address by providing a statutory declaration made before a Commissioner for Oaths/a solicitor/a Justice of the Peace. Please send the completed reply slip and the address proof to our Office by post or by fax (fax number: 2891 4804) **within two weeks from the issuing date of this letter**.

If we do not receive your reply slip and the valid address proof before the specified deadline, the Electoral Registration Officer will make written inquiry to you in accordance with section 7 of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation. The inquiry will be sent by registered post addressed to you. If we still do not receive your reply slip and address proof afterwards, your name and address will be deleted from the 2012 Provisional Register of Electors and be included in the "Omissions List" which will be published on or before 15 June 2012. Unless you lodge a claim or update your registered address on or before 29 June 2012 with the approval from the Revising Officer, your name will not be included in the 2012 Final Register of Electors and you will not be eligible to cast vote in the subsequent elections.

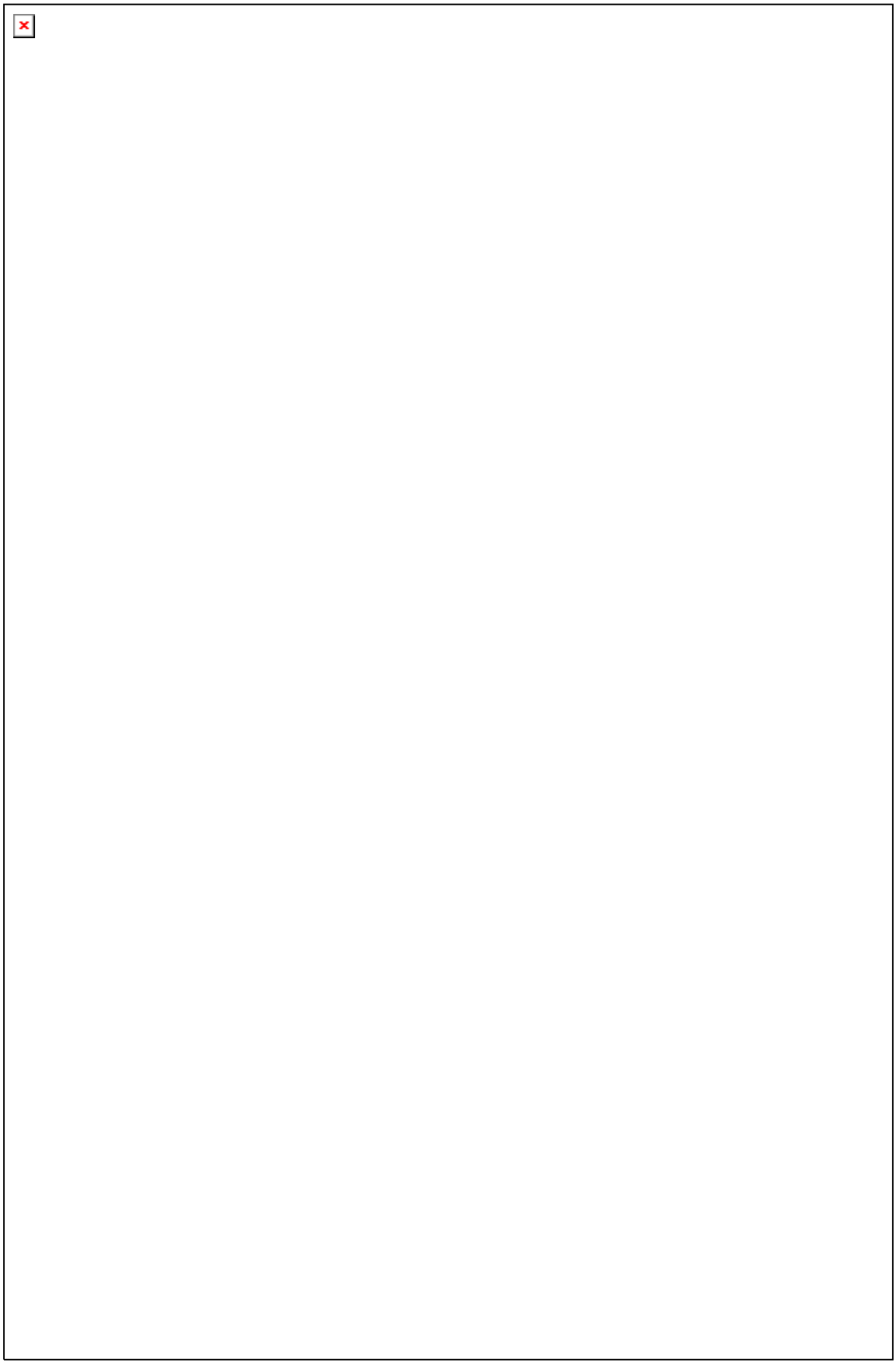
Should you have any enquiries, please call our staff at «Tel».

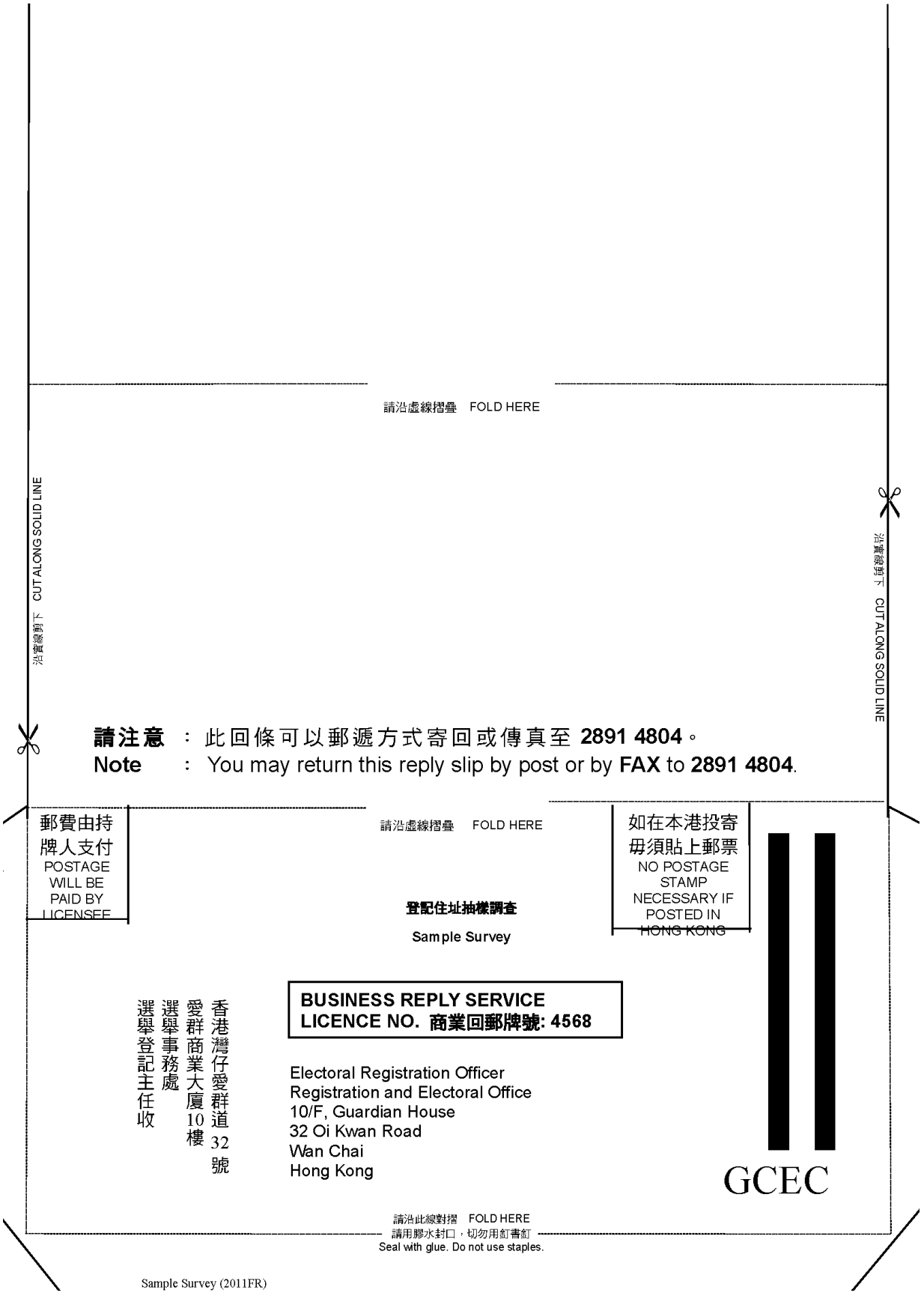
Yours faithfully,

(Ms Carrie LAM)
for Electoral Registration Officer

如欲收取候選人的電子選舉廣告，可致電 2891 1001 或登入 www.reo.gov.hk，以提供或更新您的電郵地址。
For receiving electronic election advertisements from candidates, please provide/update your email address.
Call Tel: 2891 1001 or access www.reo.gov.hk .

Sample Survey (2011FR)




請沿虛線摺疊 FOLD HERE
沿實線剪下 CUT ALONG SOLID LINE
沿實線剪下 CUT ALONG SOLID LINE
請注意 ： 此回條可以郵遞方式寄回或傳真至 **2891 4804**。
Note ： You may return this reply slip by post or by **FAX** to **2891 4804**.
郵費由持牌人支付
POSTAGE WILL BE PAID BY LICENSEE
請沿虛線摺疊 FOLD HERE
如在本港投寄毋須貼上郵票
NO POSTAGE STAMP NECESSARY IF POSTED IN HONG KONG
登記住址抽樣調查
Sample Survey
BUSINESS REPLY SERVICE
LICENCE NO. 商業回郵牌號: 4568
Electoral Registration Officer
Registration and Electoral Office
10/F, Guardian House
32 Oi Kwan Road
Wan Chai
Hong Kong
香港灣仔愛群道32號
愛群商業大廈10樓
選舉事務處
選舉登記主任收
GCEC
請沿此線對摺 FOLD HERE
請用膠水封口，切勿用釘書釘
Seal with glue. Do not use staples.
Sample Survey (2011FR)

Annex B

選 舉 事 務 處

香港灣仔愛群道 32 號
愛群商業大廈 10 樓

REGISTRATION AND ELECTORAL OFFICE

10/F, Guardian House
32 Oi Kwan Road
Wan Chai
Hong Kong

本函檔號 OUR REF.: (14) IN REO GC/52/1/2C (EC-2011FR-<SN>)
<PID>
來函檔號 YOUR REF.: --

圖文傳真 Fax: 2891 4804
電 話 Tel.: <TEL_ACO>
網 址 Web Site: http://www.reo.gov.hk

<ENG_NAME><CHN_NAME>
<MADDR_1>
<MADDR_2>
<MADDR_3>
<MADDR_4>
<MADDR_5>

Registered Mail

April 2012

Dear Sir / Madam,

Written Inquiry in accordance with Section 7 of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation

Registered Address: <CUR_ADDRESS>

Our Office has sent a letter to you requesting for completion of reply slip to confirm whether you still reside in the above-mentioned address. As you have failed to provide a reply to confirm your residential address before the specified deadline, the Electoral Registration Officer has reasonable ground to believe that the registered address may no longer be your sole or principal residence in Hong Kong.

As a result, the Electoral Registration Officer makes a written inquiry to you in accordance with section 7 of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation. Please complete the attached reply slip. You are also required to provide original or photocopy of proof of present residential address which is issued within the past 3 months (**e.g.** water/electricity/gas bill). For electors who do not have address proof, our Office will also accept the address proof of other person who lives with the elector but the elector must attach a declaration signed by the said person certifying that they live in the same address. The elector can also certify that he lives at the registered address by providing a statutory declaration made before a Commissioner for Oaths/a solicitor/a Justice of the Peace. Please send the completed reply slip and the address proof to our Office by the postage paid envelope enclosed or by fax (fax number: 2891 4804) on or before 16 May 2012. If we do not receive your reply by the deadline, your name and address will be deleted from the 2012 Provisional Register of Electors and be included in the "Omissions List", which will be published on or before 15 June 2012. Unless you lodge a claim or update your registered address on or before 29 June 2012 with the approval from the Revising Officer, your name will not be included in the 2012 Final Register of Electors and you will not be eligible to cast vote in the subsequent elections.

Should you have any enquiries, please contact our staff at<TEL_ACO>.

Yours faithfully,

(Ms Carrie LAM)
for Electoral Registration Officer

如欲收取候選人的電子選舉廣告，可致電 2891 1001 或登入 www.reo.gov.hk，以提供或更新您的電郵地址。
For receiving electronic election advertisements from candidates, please provide/update your email address Call Tel: 2891 1001 or access www.reo.gov.hk .

Sample Survey (2011FR)

<SEQ> (EC1-<SN>)

回條 Reply Slip

致 To：選舉登記主任 (經辦人：林嘉怡女士) Electoral Registration Officer (Attn.: Ms Carrie LAM)
傳真號碼 Fax No.：2891 4804

根據《選舉管理委員會（選民登記）（立法會地方選區）（區議會選區）規例》第 7 條發出的書面查訊
Written Inquiry in accordance with Section 7 of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation

登記住址： <CUR_ADDRESS>
Registered Address

就 貴處於 2012 年 4 月的來信（來函檔號：(14) IN REO GC/52/1/2C (EC-2011FR-<SN>)）查詢本人是否仍在上述登記住址居住一事，現謹覆如下：

With reference to your letter (Ref. (14) in REO GC/52/1/2C (EC-2011FR-<SN>)) dated April 2012 regarding your enquiry on my residence at the abovementioned registered address, I write to confirm that:

(＊請在以下適當的方格內填上「✓」號。)

(*Please put a "✓" in an appropriate box as follows.)

☐ * 本人現確認仍居於上述登記住址。本人並提供在上述地址居住的住址證明文件。
I still reside at the abovementioned registered address. I also provide my address proof of residing at the above address.

☐ * 本人已遷離上述登記住址。本人並提供在最新主要住址居住的住址證明文件，請 貴處根據本人下列的主要住址更改選民登記記錄。(請用正楷填寫)
I have moved from the abovementioned registered address. I also provide my address proof of residing at my latest principal residential address. Please update the electoral record according to my latest principal residential address as follows. (**Please write in BLOCK LETTERS**).

_____

_____

簽署 Signature ： _____

姓名 Name ： <ENG_NAME><CHN_NAME>

香港身分證號碼 HKID Card No. ： _____

日間聯絡電話 Day Time Contact Tel. No： _____

日期 Date ： _____

(<PID>)(2011FR_EC1_ <SN>)

如欲收取候選人的電子選舉廣告，可致電 2891 1001 或登入 www.reo.gov.hk，以提供或更新您的電郵地址。
For receiving electronic election advertisements from candidates, please provide/update your email address Call Tel: 2891 1001 or access www.reo.gov.hk .

Sample Survey (2011FR)

選 舉 事 務 處

香港灣仔愛群道 32 號
愛群商業大廈 10 樓

REGISTRATION AND ELECTORAL OFFICE **Annex C**

10/F Guardian House
32 Oi Kwan Road
Wan Chai
Hong Kong

本 函 檔 號 OUR REF: REO GC/54/4 C
來 函 檔 號 YOUR REF:

圖 文 傳 真 Fax : 2574 7441
電 話 Tel : 2891 1001
網 址 Web Site: http://www.reo.gov.hk

Registered Mail

April 2012

Dear Sir / Madam,

Updating of Electors' Records
(Category: Electors who are no longer residing at registered address-data matching)

Under section 28 of the Legislative Council Ordinance, if an elector no longer resides at the residential address recorded in the existing register of electors, unless the elector informs the Electoral Registration Officer of his new principal residential address, he may be disqualified from being registered in any subsequent registers of geographical constituencies. If he is also an elector of a functional constituency or voter of a subsector, the disqualification to be registered in the geographical constituency will lead to his disqualification to be so registered in any subsequent registers of functional constituencies or subsectors.

According to our record, your principal residential address recorded in the existing Final Register of Electors for geographical constituencies is as shown in the enclosed **Annex**. In accordance with section 6 of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A) and the consent given by the Privacy Commissioner for Personal Data, we have obtained information from the related government department and have reasonable grounds to believe that this address is no longer your only or principal residence in Hong Kong.

In view of the above, **please complete and return the enclosed reply slip to us on or before 16 May 2012 by fax or by mail**. Please note that **notwithstanding you are still residing at the address shown in the Annex, you are required to complete the reply slip and return it to us before the aforesaid deadline. You are also required to provide original or photocopy of proof of the aforesaid residential address which is issued within the past 3 months (e.g. water/electricity/gas bill). If we do not receive your reply slip by the deadline, your name and address will be deleted from the 2012 Provisional Register of Electors** and included in the "Omissions List", which will be published on or before 15 June 2012. Notwithstanding your name is included in the "Omissions List", if you confirm your latest residential address with our Office in writing on or before 29 June 2012 (the statutory deadline for reporting change of residential address or other personal particulars), your updated registration particulars will be included in the 2012 Final Register of Electors upon obtaining approval from the Revising Officer.

According to the relevant regulations, if your name is included in the "Omissions List", you may appeal against the omission by lodging a claim with this Office on or before 29 June 2012. The claim will be referred to the Revising Officer for consideration. The Revising Officer will rule on the claim and decide on the inclusion, exclusion or correction of your registration particulars in the 2012 Final Register of Electors.

Should you have any enquiries, please call our hotline at 2891 1001.

Yours faithfully,

(Kelvin YEUNG)
for Electoral Registration Officer

Vetting (DM)_2012

如欲收取候選人的電子選舉廣告，可致電 2891 1001 或登入 www.reo.gov.hk，以提供或更新您的電郵地址。
For receiving electronic election advertisements from candidates, please provide/update your email address
Call Tel: 2891 1001 or access www.reo.gov.hk

選舉事務處
香港灣仔愛群道32號
愛群商業大廈10樓

REGISTRATION AND ELECTORAL OFFICE
10/F Guardian House
32 Oi Kwan Road
Wan Chai
Hong Kong

本函檔號 OUR REF: REO UDIF
來函檔號 YOUR REF:

圖文傳真 Fax : 2892 0074
電話 Tel : 2891 1001
網址 Web Site: http://www.reo.gov.hk

Annex D

Registered Mail

April 2012

Dear Sir / Madam,

Updating of Electors' Records
(Category: Electors who are no longer residing at registered address)

Under section 28 of the Legislative Council Ordinance, if an elector no longer resides at the residential address recorded in the existing register of electors, unless the elector informs the Electoral Registration Officer of his new principal residential address, he may be disqualified from being registered in any subsequent registers of geographical constituencies. If he is also an elector of a functional constituency or voter of a subsector, the disqualification to be registered in the geographical constituency will lead to his disqualification to be so registered in any subsequent registers of functional constituencies or subsectors.

According to our record, your principal residential address recorded in the existing Final Register of Electors for geographical constituencies is as shown in the enclosed **Annex**. However, as the mail that we sent to you at that address was returned to us by the HongKong Post, or based on the information provided by the existing occupant of the above-mentioned address or others, we have reasonable grounds to believe that this address is no longer your only or principal residence in Hong Kong.

In view of the above, **please complete and return the enclosed reply slip to us on or before 16 May 2012 by fax or by mail**. Please note that **notwithstanding you are still residing at the address shown in the Annex, you are required to complete the reply slip and return it to us before the aforesaid deadline. You are also required to provide original or photocopy of proof of the aforesaid residential address which is issued not more than 3 months from now (e.g. water/electricity/gas bill). If we do not receive your reply slip and address proof (if applicable) by the deadline, your name and address will be deleted from the 2012 Provisional Register of Electors** and included in the "Omissions List", which will be published on or before 15 June 2012. Notwithstanding your name is included in the "Omissions List", if you confirm your latest residential address with our Office in writing on or before 29 June 2012 (the statutory deadline for reporting change of residential address or other personal particulars), your updated registration particulars will be included in the 2012 Final Register of Electors upon obtaining approval from the Revising Officer.

According to the relevant regulations, if your name is included in the "Omissions List", you may appeal against the omission by lodging a claim with this Office on or before 29 June 2012. The claim will be referred to the Revising Officer for consideration. The Revising Officer will rule on the claim and decide on the inclusion, exclusion or correction of your registration particulars in the 2012 Final Register of Electors.

Should you have any enquiries, please call our hotline at 2891 1001.

Yours faithfully,

(Winnie KWOK)
for Electoral Registration Officer

Vetting (DC2FC_UDIF)_2012

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Call Tel: 2891 1001 or access www.reo.gov.hk

Annex E

選舉事務處

香港灣仔愛群道32號
愛群商業大廈10樓

REGISTRATION AND ELECTORAL OFFICE

10/F Guardian House
32 Oi Kwan Road
Wan Chai
Hong Kong

本函檔號 OUR REF: REO GC/54/4 C Pt.2
來函檔號 YOUR REF:

圖文傳真 Fax : 2574 7441
電話 Tel : 2891 1001
網址 Web Site: http://www.reo.gov.hk

Registered Mail

April 2012

Dear Sir / Madam,

Updating of Electors' Records

Under section 28 of the Legislative Council Ordinance, if an elector no longer resides at the residential address recorded in the existing register of electors, unless the elector informs the Electoral Registration Officer of his new principal residential address, he may be disqualified from being registered in any subsequent registers of geographical constituencies. If he is also an elector of a functional constituency or voter of a subsector, the disqualification to be registered in the geographical constituency will lead to his disqualification to be so registered in any subsequent registers of functional constituencies or subsectors.

According to our record, your principal residential address recorded in the existing Final Register of Electors for geographical constituencies is as shown in the enclosed **Annex**. However, based on the information provided by the existing occupant of the above-mentioned address or other persons, we have reasonable grounds to believe that this address may not be your only or principal residence in Hong Kong.

In view of the above, **please complete and return the enclosed reply slip to us on or before 16 May 2012 by fax or by mail**. Please note that **notwithstanding you are still residing at the address shown in the Annex, you are required to complete the reply slip and return it to us before the aforesaid deadline**. **You are also required to provide original or photocopy of proof of the aforesaid residential address which is issued not more than 3 months from now (e.g. water/electricity/gas bill). If we do not receive your reply slip and address proof (if applicable) by the deadline, your name and address will be deleted from the 2012 Provisional Register of Electors** and included in the "Omissions List", which will be published on or before 15 June 2012. Notwithstanding your name is included in the "Omissions List", if you confirm your latest residential address with our Office in writing on or before 29 June 2012 (the statutory deadline for reporting change of residential address or other personal particulars), your updated registration particulars will be included in the 2012 Final Register of Electors upon obtaining approval from the Revising Officer.

According to the relevant regulations, if your name is included in the "Omissions List", you may appeal against the omission by lodging a claim with this Office on or before 29 June 2012. The claim will be referred to the Revising Officer for consideration. The Revising Officer will rule on the claim and decide on the inclusion, exclusion or correction of your registration particulars in the 2012 Final Register of Electors.

Should you have any enquiries, please call our hotline at 2891 1001.

Yours faithfully,

(Kelvin YEUNG)
for Electoral Registration Officer

Vetting (LEA)_2012

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