OFFICIAL RECORD OF PROCEEDINGS

Thursday, 7 June 2012

The Council continued to meet at half-past Two 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 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.

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.

DR THE HONOURABLE PAN PEY-CHYOU

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

THE HONOURABLE CHAN KIN-POR, J.P.

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

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

PUBLIC OFFICER ATTENDING:

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

CLERKS IN ATTENDANCE:

MR ANDY LAU KWOK-CHEONG, ASSISTANT SECRETARY GENERAL

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

BILLS

Committee Stage

CHAIRMAN (in Cantonese): Council will now resume and continue with the joint debate on the first group of amendments moved by the Secretary for Commerce and Economic Development.

COMPETITION BILL

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I know that you are very good at mathematics, so please do a headcount first. Today, the subject of examination is addition.

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members entered the Chamber)

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, Mr IP Wai-ming said yesterday he wanted to put on record the fact that I had left after requesting a headcount. I did so yesterday, so I will also do so today because I want to test how fast Members can come back. That's really awesome, for some improvement has been made!

CHAIRMAN (in Cantonese): Please continue with your speech.

MR LEUNG KWOK-HUNG (in Cantonese): OK. Yesterday, I said that clauses of different nature could be grouped together for a joint debate. However, voting on them altogether is not very desirable — of course, I know I should speak to the question — take clause 10(1) as an example, what is the amendment about? Within the Competition Commission (the Commission),

how can it inform the parties to a lawsuit or the plaintiff of the decisions of the Commission? Generally speaking, the original Bill says that a company or legal entity can make an application to the Commission, so that it can decide if the relevant agreement is in line with the competition law. What are the views of the Commission, what decisions has it made — I am not going to talk about how it makes its decisions for the time being because I have proposed amendments in this regard, but I am not going to talk about this now — and how does the Commission actually inform people of its decisions? The original clause says that the Commission may bring a decision on the application to the attention of those affected by its decision in an appropriate manner. This is very important because otherwise, even if someone takes legal action against you or other people, you would have no way of learning about it.

Another point is that the people affected can make representations within the specified time. This is also a right. If someone takes legal action against you, you have to know it before you can make a representation. For example, if A takes legal action against B, B takes legal action against C and C takes legal action against D and the one taking legal action needs not notify the other party. This is just like in the ancient times, when people could go to a magistrate or Yamen (official court of law in ancient China), beat the drum to complain about the injustice done to them, and the proceedings could then start. The Commission can then begin to consider the application.

Therefore, the question lies in how to protect those people affected by the applications. What is this amendment about? The Commission may bring its decision on an application to the attention of those affected by its decision in an appropriate manner (through the Internet or a similar electronic network). I am not sure if this would be effective because I myself do not even look at my own Facebook account. However, the problem is that generally speaking, unless people are familiar with one another like I am with the Chairman, so much so that you would call me and say, "Mr LEUNG Kwok-hung, blah blah blah", you would issue an official letter to me instead, saying, "Mr LEUNG Kwok-hung, let me tell you, you cannot leave next time when a headcount is being done.". In these circumstances, an official letter should be used to ensure that its receipt, or a colleague should be asked to take the official letter to my office and ask me to sign in receipt. Moreover, it is necessary to put a hand print on it to prevent "Long Hair" from saying later on that he had no idea.

Chairman, how does this method work? Usually, an intermediary is entrusted to do so. In the past, postal service was used and what are called "normal registered mail", "registered mail with advice of delivery" or surface mail are available. If surface mail is used, there is no guarantee. Therefore, usually, surface mail is not used in the case of official letters. What is the proven method? It is to make use of a mutually recognized trustee to ensure that a message or object is transferred to another organization, person or legal entity and this guarantee is not one-way. The person sending the message or object would also know that the other party has received it. When I got summonses from the Court, the same applies and usually, police officers were tasked to do so. In respect of civil cases, double registered mail is used. I once had a conflict with a mean landlord and threw away all the letters that he sent me. In the Court, I said that the landlord had never sent any letter to me, so the judge chided the lawyer concerned, asking him why he did not make use of an intermediary that assumed clear responsibility for sending the letters.

Why do I delve into such things at length? Because it is a proven method that has been in use for several decades, even though double registered mail is very expensive. In fact, this mode of delivery is even more convenient nowadays because there are various types of intermediaries like the DHL, rather than just postal service. It can be said that various other ways are at your finger tips. If you are a long-term client, the intermediaries can even collect the letter from you.

I wish to ask those people who proposed the amendments to enlighten me on why this method has to be cancelled. Is it because it has become more difficult to send registered mail, or is it because there are fewer intermediaries offering courier services akin to registered mail, or have the charges been increased, or has this method become obsolete? They could not answer and they do not know.

Chairman, let me see. That clause consists of only a few words, so you do not have to see if I have strayed from the question.

CHAIRMAN (in Cantonese): I am just about to see if you have strayed from the topic.

MR LEUNG KWOK-HUNG (in Cantonese): Have I?

CHAIRMAN (in Cantonese): No, I am just about to see what relevance your comments bear to the amendment.

MR LEUNG KWOK-HUNG (in Cantonese): Don't worry. I am an upright person, so I would not put you to the test by fabricating a provision casually, nor would I go outside after giving my speech and say that the Chairman is so very stupid that even though I fabricated a provision and talked nonsense for 15 minutes, he still did not know ……

CHAIRMAN (in Cantonese): Please do not stray from the question.

MR LEUNG KWOK-HUNG (in Cantonese): I have done my homework. Other people did it for me; I did not do it. I am a lazy bone, only that I would be at the forefront in any tug-of-war.

Why is it like this? In fact, it is necessary to have a goal for any enactment of legislation. The aim in enacting this piece of legislation is: When an organization is empowered to handle disputes or the legal proceedings relating to anti-competition conduct according to the law being passed by us now, it has to be fair to all parties, not just to the party taking legal action but also to the party being sued. If we want to be fair, of course, there must be an equal right to information. As we all know, the right to know or the right to information is actually central to a globalized economy. If you are not informed, you would be at a disadvantage.

In my humble opinion, this amendment has gone too far in providing that no registered mail would be used. However, how can this method be dispensed with? Some people like to drive a Porsche and I like to drive a Volkswagen, but that person cannot say that driving a Porsche is definitely in the right, or if he wants to drive an environmentally-friendly car but I do not do so, he cannot say that he is surely in the right.

To many people, the Internet and electronic networks are really convenient and money-saving and they also enable people to be informed of the relevant matters even much more easily, whereas a letter may be taken away by the secretary of the person concerned, so that he cannot read it. However, e-mails are different, Chairman. I know that on going back, you would check your e-mails immediately to see if anyone has praised you or lambasted you on Facebook. You can see immediately if anyone has lambasted you for cutting the filibuster. However, not everyone would do so, so the Government cannot adopt a method that it considers to be better and eliminate another method that provides greater assurance.

Therefore, I have studied this for a long time to see how I can speak for 14 minutes and would still be able to talk about this issue later on. However, the time is nearly up now. Chairman, I do not think that this amendment is appropriate because it cannot promote judicial fairness or fairness to both parties to legal proceedings. Instead, it would only lead to abuse of power or dereliction of duty on the part of the Commission without any grounds. Therefore, I humbly hope that Honourable colleagues do not have to be so frightened when they hear the bell ring. It is necessary to discuss the Bill in detail. I do not think that this amendment should be accepted. Accepting this amendment would be an even greater misery than having to hasten here on hearing the bell.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Dr Margaret NG, speaking for the second time.

DR MARGARET NG (in Cantonese): Chairman, my comments are related to the amendment to clause 153.

Clause 153 is related to "Appeal to Court of Appeal". Chairman, the original clause reads, "An appeal lies 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.".

Chairman, we have to look at how great the power of the Competition Tribunal (the Tribunal) is and what sanctions and orders it can make. For this reason, we have to look at clause 141 first of all. Clause 141 provides for the jurisdiction of the Tribunal. We can see that there are many items under subsection (1), so I will only talk about the most important ones:

First, it has the power to deal with "applications made by the Commission with regard to alleged contraventions of the competition rules". In other words, if the first conduct rule or second conduct rule specified in the Bill is violated, the Competition Commission (the Commission) has to make an application to the Tribunal, stating that such a violation has occurred and that it is referred to the Tribunal for a decision — Chairman, you may also remember that the Tribunal is presided over by the Judges of the Court of First Instance — this is paragraph 1(a). Subsection (c) …… or rather, subsection (d), is about "applications for the disposal of property", paragraph (e) is about "applications for the enforcement of commitments" and the next one is about any other related matters. Therefore, in the entire competition law, this Tribunal occupies a central position and it assumes a supreme position. It can make all of the most important decisions, including determinations of what practices constitute violations of the conduct rules.

Chairman, in the debate yesterday, on such questions as what is meant by market power, abuse of market power and what practices constitute violations of the law, often, we cannot just rely on the definitions of the terms but have to rely on precedents. It is necessary to analyse the facts of each case before we can have an idea.

Chairman, the other clauses indicate that the decisions and judgments of the facts made by this Tribunal …… that is, based on the facts or the facts of a case, the Tribunal will rule whether or not the practices concerned constitute breaches of the first conduct rule or the second conduct rule. Therefore, any party disputing any decision can lodge an appeal with the Court of Appeal.

However, Chairman, according to the original Bill, if one wants to lodge an appeal against such important decisions, it is necessary to obtain leave from the Court of Appeal before one can do so, that is, you do not have such a right. You do not have the right to appeal and you have to apply for leave. Therefore, when scrutinizing the Bill, we were very astonished and also felt lost. This is because

we know that under our laws, there is the right to lodge an appeal. In particular, given that matters of material interests are involved, how can there be no right to lodge an appeal? How can there not be a right to appeal? Be it the party accused of violating the conduct rules or the Commission, in the event that a decision is considered to be erroneous as the undertaking of an individual has obviously violated the conduct rules, yet the Tribunal has erred in ruling that there is no violation, the implications would be far-reaching, so one will want to lodge an appeal. Chairman, can one lodge an appeal against the ruling of the Tribunal as of right? This should all the more be the case because only the decisions of the Court of Appeal are authoritative.

However, in the original Bill, clause 153(2) provides that an appeal can be lodged only "with the leave of the Court of Appeal". As to clause 153(3), in what circumstances will the Court of Appeal grant leave for an appeal? Unless the Court of Appeal is satisfied that the relevant appeal "has a reasonable prospect of success" or "there is some other reason in the interests of justice", an appeal would not be allowed. This would narrow the scope of the appeals and curtail your right to appeal. Our first ground is that given the importance of such matters, the right of both parties in the legal proceedings to lodge an appeal should not be curtailed.

Second, Chairman, we do not consider the treatment equitable. Not long ago — perhaps that was already in the last century — we passed some amendments relating to the law on civil proceedings and court procedures to narrow the scope of interlocutory appeals, so that the Court does not have to deal with the side issues, that is, interlocutory applications and appeals, all the tie, thus leaving no time for the trial proper and rendering the financially weaker side unable to reach the stage of trial proper even though it has strong grounds. Therefore, on interlocutory appeals, we agree with the view of the Court, that is, it is necessary to obtain leave to appeal before an appeal can be lodged.

In view of this, we must ask a question: Why does the Tribunal adjudicating in accordance with the competition law not adopt the same yardstick? In the case of the appeal trial proper, that is, the substantive appeal, there should be an appeal as of right. If leave to appeal is required in the case of interlocutory appeals, we think that this is still reasonable. Moreover, even with regard to leave for an interlocutory appeal, we believe that it is necessary to give equal treatment and the same terms should be used in respect of what conditions

and yardstick are adopted by the Court in granting or not granting leave to lodge an interlocutory appeal.

Chairman, regarding appeals in other situations, the laws are not drafted in this way and they do not provide that unless the Court is satisfied that a case has a prospect of success, no leave to appeal would be granted, rather, whether the Court is satisfied or not depends on whether or not your case has a prospect of success. If you have a reasonable prospect of success or other grounds of justice, you would be granted leave to appeal. You may say that we are playing with words, so what is the difference between the two? Perhaps in the final analysis, the difference is not that great but there is indeed a difference.

For this reason, we demand that firstly, there must be a natural right to appeal; secondly, in the case of leave for interlocutory appeal, equal treatment on a par with other situations should be given. However, in this regard, our demand had met enormous resistance but, in the end, the department told us that amendments could be made. This is how the amendments today came about.

Therefore, Chairman, we support the amendment to clause 153 today but in the process, again, we learnt that the Judiciary was opposed to such an amendment. It wanted the right to appeal to be curtailed and we really find this most puzzling. If the reason is the overwhelming number of cases that the Court has to deal with, we strongly support increasing the number of Judges, so why is it necessary to curtail the right to appeal? In particular, there are some special features in this Bill, Chairman, that is, the provisions from clause 115 onwards are related to legal proceedings.

Chairman, many civil proceedings are dealt with by the Court of First Instance but this Bill specifies that anti-competitive acts have to be dealt with by the Tribunal and cannot be referred to the Court of First Instance direct. The Tribunal has the so-called exclusive jurisdiction, that is, it alone has the power of adjudication — of course, there are also some exceptions. If you want to deal with two matters simultaneously, it would ask you to separate them. Therefore, very strangely, although competition gives consumers more choices, under this Bill, you do not have any choice on where to initiate the proceedings. You do not have any choice. Why? The department explained to us that since the competition law badly needs some convincing, clear and definite precedents to enable all parties to know what the standards of behaviour are, therefore, the

Administration hopes that all cases can be dealt with by the Tribunal by all means, particularly at the initial stage, so that the Tribunal can accumulate sufficient experience, particularly given that there may also be some variance in its mode of operation. Say, there is an assessor in it because this kind of cases does not just involve legal issues but also economic ones. Therefore, it may be necessary for an assessor with knowledge of the market and economy to help dispose of a case. For this reason, the decisions made by the Tribunal may differ greatly from those made in ordinary civil or criminal proceedings. The department explained that forum shopping would not be allowed, that is, you are not allowed to choose a venue where you would have a great chance of winning, so the relevant cases must be referred to and handled by the Tribunal. Since the Government hopes that the Tribunal can accumulate some experience, appeal is the most important step because if the decisions of the Tribunal are erroneous, the Court of Appeal can rectify them, or if the decision of the Tribunal is correct but any party disputes it, it can take the case to the Court of Appeal for it to confirm that the decision of the Tribunal is correct. This is the powerful and effective way to go in accumulating experience.

In the debate, a number of Honourable colleagues voiced grave concern about the legal costs. In fact, we often hope that the Court can make clear rulings. With clear rulings, all lawyers would tell you that you cannot continue with the lawsuit because the ruling is already very clear. Therefore, Chairman, given all these grounds, in respect of the right to appeal, there should be the natural right to appeal. Since the goal has been achieved and now that we have lobbied successfully for the restoration of the right to appeal, why is it still necessary for me to say more?

Chairman, first, I wish to explain clearly why this amendment is so important. Second, I wish the authorities would not say to us on each occasion that they have consulted the Judiciary and that this is the view put forward by the Judiciary, therefore, it should be followed. First, I do not think that consultation with the Judiciary is a desirable practice. The former Chief Justice, Mr Andrew LI, once said that after the legislature had passed a law, the Judiciary had to follow it. Only in what circumstances should the Judiciary voice its views? First, if there is any violation of principles, for example, if the principle of judicial independence is violated, it would then voice its views; second, if issues like the number of judges or court resources are involved, it would tell you that the matters you want to handle will increase the workload of the Court, so the

number of judges has to be increased. In addition, the former Chief Justice said that the Judiciary should not express any view on the legislative policy. This is a very sagacious and correct attitude. If the Court has already expressed its views on what is right or wrong during the legislative process, in the future, how do you think the Court can deal with the relevant cases? How can it point out that you have erred?

Therefore, this is a very dangerous move. Chairman, this is particularly so given that yesterday, we talked about restrictions on judicial review. Now, the Government wants to restrict the right to appeal. If, the Judiciary already says that it does not want to see so many judicial reviews or it does not want to deal with so many appeals at the stage of legislation, how much confidence do you think the appellants or people seeking judicial review will have? Indeed, this is giving a ruling even before a trial has started. One's heart will sink on arriving at the Court and learning about this background.

Chairman, will we actually see many cases of this kind? We have looked up the information, particularly that relating to judicial reviews — I do not know where my sheet of information is — in the past few years, the numbers of judicial reviews were not really that many. Therefore, I do not wish to see the department make use of the Judiciary as an expedient excuse. Moreover, if the Judiciary has indeed been consulted, I hope it would understand that it should exercise self-restraint and should not express so many views on the legislative policy at this stage. In particular, on this clause, the legal policy should focus on enabling the Tribunal to make more authoritative rulings. Not allowing the lodging of appeals actually runs counter to the policy of the department *(The buzzer sounded)* …… Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(Mr Andrew LEUNG raised his hand in indication)

CHAIRMAN (in Cantonese): Mr Andrew LEUNG, speaking for the second time.

MR ANDREW LEUNG (in Cantonese): Chairman, yesterday, when Mr Ronny TONG spoke, he said that SMEs had been misled. In fact, Mr Ronny TONG has made such comments not just once, rather, throughout the whole course of scrutiny, be it at the meetings or in newspapers, he always said that SMEs had been misled or that someone had misled SMEs.

Last night, a friend of mine in the SME sector rang me up. He was very astonished by the comments made by Mr TONG because as Dr Margaret NG and many Members have said, there are many vague areas in the Bill that cause concern among SMEs. The Chairman is looking at me, so I am sure he wants to ask me what I am talking about. I will go on talking about this because this is relevant to the present session.

Yesterday, Mr TONG also talked about the penalty. The requirement of paying a fine no more than $10 million to the Government in the infringement notice has been removed. It is precisely this requirement relating to $10 million that strikes fear among SMEs and it is not necessary for anyone to mislead them. What does $10 million mean to SMEs? It means a huge sum of money. Second, Mr TONG talked about a fine on the global turnover, saying that this does not matter, that it should just be imposed to create a deterrent effect. Of course, he also said that overseas companies in Hong Kong cannot plunder as they wish and undermine fair competition. However, we have to bear in mind the other side of the coin, that is, each company also comes to Hong Kong with its business reputation. Would Mr TONG go everywhere to solicit business and charge low fees in order to induce cut-throat pricing in the market? No company would because its business reputation is at stake. However, an even more important point is that many SMEs have business presence not just in Hong Kong but all parts of the world. If they inadvertently step on landmines in the Hong Kong market and attract a fine on the global turnover, they would not be able to bear it. SMEs account for 98% of the companies in Hong Kong and Hong Kong owes its success to the SMEs. They are very familiar with the market and their lines of business, so when they learnt about this competition law, they were really frightened.

In the course of scrutiny by the Bills Committee, members of the public were invited to express their views on a number of occasions and each time, representatives of SMEs were present. These representatives did not just read

from prepared scripts and no one ever provided all the information for them to read out. They did not just follow the flock like sheep. Each SME expressed views on behalf of various business associations and their members, so that we can make reference to them. Therefore, I hope Members would not label members of the public arbitrarily because they want to pass the Bill. SMEs in Hong Kong are astute and they know how to operate their businesses. I have to make this point clear.

Second, Mr TONG said yesterday that many other laws also enabled lawyers to make a lot of money. He stressed that consortia like to hire shrewd lawyers and barristers, so that they can make a lot of money by exploiting grey areas. I wish to point out to Mr TONG that SMEs cannot afford hiring shrewd barristers to fight cases, so they demand that private actions be removed because private actions are precisely the method adopted by those shrewd barristers hired by consortia to deal with SMEs. Therefore, we support the Government in deleting the amendment related to private actions. However, if consortia commit an offence and are proven to have violated the competition law, "follow-on actions" can actually assist SMEs in getting the compensation due to them.

Therefore, I hope Members will not pin labels on SMEs arbitrarily for the sake of passing the Bill.

MR JEFFREY LAM (in Cantonese): Chairman, I have heard many Members talk a lot of about the issue of lawsuits ……

(Mr Albert CHAN stood up)

CHAIRMAN (in Cantonese): Mr Albert CHAN, what is your point?

MR ALBERT CHAN (in Cantonese): A quorum is lacking.

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): Mr Jeffrey LAM, please continue.

MR JEFFREY LAM (in Cantonese): Chairman, many Members said that the business sector is blocking the passage of the Competition Bill (the Bill). Members can look at Members of the pro-democracy camp, who often disrupt the meeting. Are they deliberately blocking the passage of the Bill, or what are they doing?

Chairman, in the past couple of days, I have heard many Members say that it seems the Government, in making concessions on the Bill a number of times, for example, by removing private actions and raising the threshold of the *de minimis* arrangement, had turned this Bill into a "toothless tiger", thus making it difficult to eradicate unfair competition practices in the market and impossible to protect public interests.

Here, first of all, I wish to ask how the Bill submitted to us for scrutiny was like. During the discussion on the Bill, the Hong Kong General Chamber of Commerce invited many experts on competition law from various countries to attend various forums and they included the Commissioner of Competition of Canada, the former Competition Commission Chairman of the United Kingdom and a number of top-notch European and American experts on competition law. They are all veritable experts rather than self-proclaimed experts. These experts all believe that there are many problems with the original Bill, pointing out that the objects of the Bill were to enhance economic efficiency on the one hand and bring benefits to consumers on the other, yet there is contradiction between these two objects.

Chairman, we have all along expressed various views on the problems relating to the Bill to the Government. Here, I wish to say that the original Bill, to put it somewhat harshly, is really a lame Bill ……

CHAIRMAN (in Cantonese): Mr LAM, at this stage, we should discuss the details of the clauses rather than the principle of the Bill. Please focus on the details of the clauses.

MR JEFFREY LAM (in Cantonese): I understand. Chairman, I will now begin to talk about the details of the clauses. The original aim of the competition law was to protect SMEs and to prevent them from being harmed by the various anti-competitive tactics of consortia, so that they can do business more freely, in the hope of lowering market prices effectively to benefit consumers in the long run. However, at present, criteria have not yet been set for some key issues covered by the Bill, for example, the definition of abuse of market power. If the Government enacts the law hastily, in the end, it may not be able to hit the "big tigers" but may harm SMEs instead.

We have expressed our views to the Government, including the proposal that the stand-alone right of private action be removed, in view of the fact that this is a problem that has aroused great concern among SMEs. We are not …… we have heard the views of many SMEs and have also had in-depth communication with many SMEs, including some business associations for SMEs and members that are SMEs in large business associations. Their concern is that in future, apart from having to bear the cost of compliance in doing business, they also have to face the many lawsuits arising from enforcement by the authorities, thus seeing their scope of business operation being reduced gradually. This is what is meant by "bad government is even fiercer than a tiger".

Chairman, SMEs' financial capability is limited. If they have to seek the advice of the so-called competition law experts all the time, they really do not have to do business anymore. First, they do not have so much time to deal with lawsuits; and second, they do not have so much money to hire lawyers. As we all know, even merely talking to members of the legal sector would incur fees and lawyers may also offer you different advice because there are always grounds for and against both parties in a lawsuit. Moreover, the competition law is a newly formulated piece of legislation and the number of legal professionals with knowledge in this field is definitely limited. Enterprises may have to hire overseas experts on competition law by offering high pay and the fees involved may be exorbitant. As I said just now, the advice given by different lawyers may vary and the advice given by Hong Kong and overseas lawyers may also be

different. If a few more law firms are approached for their advice, the profits made by these companies will all have to go to lawyers. In that case, it would be futile to do business. May I ask how SMEs can cope and how their mind can be put at ease? Nowadays, the Government has called on enterprises to "shed weight" by all means to create a favourable business environment. However, these situations pointed out by SMEs would only work against Hong Kong's business environment. The Government is still at a loss as to how to reduce legal fees. Before there is any solution, is it beneficial to the public to enact the law hastily?

What is most baffling now is that it looks as though the Government had just woken up and realized that the stand-alone right of private action may be abused by consortia to bully competitors that are SMEs by legal means. For this reason, it has removed private actions. However, it now turns out that many Members have urged the Government to give an account of the timetable for reviewing whether or not private actions should be included in the competition law again. In fact, the Government should consider in earnest the withdrawal of the competition law before the Bill has been improved.

Has it ever occurred to these Members that the turnover of SMEs may be quite high but their gross profits are very small. Given that legal fees only rise and never fall, SMEs are worried that consortia would take this opportunity to drive them into a dead end or influence business competitors operating on a smaller scale. Would this not run counter to the legislative intent of the competition law or the anti-monopoly law?

Chairman, since the Bill is so lame and impacts on SMEs because enterprises will be preoccupied with dealing with lawsuits, thus making it difficult to focus on innovation, we cannot see how consumers can be benefited. Moreover, since Members have called for further revisions after enactment, one may as well withdraw the Bill now. Secretary, please withdraw the Bill now.

A year ago, the snack shop "759 Oshin House" accused its suppliers of putting restrictions on retail prices, so that supermarkets could benefit from this measure, calling this an anti-competitive practice. However, the business of the "759 Store" increased drastically in the same year because of the limelight it attracted. Its number of branches quintupled to more than 60 now and its annual

turnover reached $500 million. To small shops, has the "759 Oshin House" chain become a hegemonic enterprise? If the "759 Oshin House" chain faces legal challenges arising from the competition law in future, will it have to devote its manpower to this and will its ability of business innovation be undermined due to the need to meet legal expenses?

Chairman, an even more weird point is that some Members have directed criticisms at the Bill on the one hand and expressed their support for it on the other. Why is this so? The overseas experts on competition laws told me frankly that the greatest beneficiaries of competition law would be barristers and this piece of legislation was actually tailored for lawyers. He said that he himself was also a beneficiary who made a lot of money thanks to competition law. However, do Members know that SMEs not granted any exclusion will fare the worst? It is practically impossible for them to influence or monopolize the market and should the existing Bill be passed, these SMEs will have to pay huge costs of compliance ……

CHAIRMAN (in Cantonese): Mr LAM, please focus on the details of the amendments.

MR JEFFREY LAM (in Cantonese): …… fine. Chairman, I have finished. I so submit. Thank you.

MR FREDERICK FUNG (in Cantonese): Chairman, insofar as this joint debate is concerned, I oppose the amendments to clauses 91, 104 and 106 and Division 3 of Part 7. As this is a joint debate, the amendments might be put to vote later on as a package. As I oppose the aforesaid amendments but favour others, I wonder if the Chairman can do me a favour by debundling these amendments so that they can be put to separate votes. If not, I will be compelled to cast a dissenting vote.

In particular, the amendments to clauses 104 and 106 and Division 3 of Part 7 are related to the deletion of stand-alone private actions. My argument is precisely contrary to the one advanced by Mr LAM just now. Part 7 of the Bill originally provides for private actions to be brought by persons who have suffered

loss as a result of a contravention of a conduct rule. Such private actions could either follow on from a determination of a contravention by the Court, or could be "stand-alone" actions seeking a judgment on particular conduct and remedies. But unfortunately, SMEs have not only some unnecessary misgivings, but also a conspiracy theory suspecting large companies, as mentioned by Mr LAM just now, ……

CHAIRMAN (in Cantonese): Mr FUNG, please pause for a while. Mr LEUNG Kwok-hung, please move aside those placards which are unrelated to this meeting. Mr FUNG, please continue.

MR FREDERICK FUNG (in Cantonese): As pointed out by Mr LAM just now, these are "threats". Large companies with abundant resources will take advantage of their machinery and systems to get rid of their competitive rivals, namely SMEs. Honestly, how can SMEs have the conditions and capacity to monopolize the market? Mr LAM's remarks are simply self-contradictory. On the one hand, he said that SMEs had no monopoly on the market but, on the other, he said SMEs would thus have to take into account this sum of expenses and their costs would rise, too. Given that SMEs are incapable of monopolizing the market, why should they worry that people will exploit the competition law to oppress individual SMEs?

As everybody knows, in theory, the competition law should have a target, which should basically be large consortia because only they stand any chance of monopolizing the market. The purpose of this Bill is to produce a so-called deterrent effect to prevent monopoly by large consortia. However, if the right to bringing these stand-alone private actions is abolished, the competition law will become a "toothless tiger" and large consortia or large enterprises can thus get away and will not be afraid of it.

In our opinion, not only should the stand-alone right of private action be retained, a class action mechanism should also be included in the Bill to enable aggrieved members of the public to pool their strength and resources to wrestle with large consortia. However, not only does the Government fail to include class action in the Bill, it even seeks to deprive members of the public of the right

of private action. We can thus see that the Government is "business-oriented" rather than "people- oriented".

Chairman, I oppose the amendments to the several clauses I mentioned just now. Can the Chairman allow me to vote on the four clauses I read out just now separately? Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

DR MARGARET NG (in Cantonese): Chairman, I wish to give a brief speech only. I have heard many Members say today and yesterday that the Bill, if passed, will lead to a lot of legislative control because many provisions might have an impact on SMEs, but SMEs will directly or indirectly be victimized as they cannot afford exorbitant lawyer fees.

Chairman, for political reasons, some Members might want to block the passage of the Bill at the legislative stage. I am not targeting these Members, only that the more I hear, the more I feel the Government has failed to perform its duty properly. As a result, people are wary of the Bill. Chairman, the Bill was originally intended to help rather than victimize the public. Why has the Government performed so badly that people are given the impression that the competition law has become more and more ambiguous, and members of the public are concerned about the possibility of spending exorbitant lawyer fees in the future because of the ambiguity of the law?

Chairman, the terms of reference of the Competition Commission (the Commission) are set out in these clauses. Under clause 129, the functions of the Commission include, among others, "promoting research into and the development of skills in relation to the legal, economic and policy aspects of competition law in Hong Kong". After the passage of the Bill, I hope the Court, especially the Court of Appeal, can make a specific ruling to give the Commission a clear guideline that it should undertake publicity concurrently. I hope such work can give SMEs an impression that the legislation actually seeks to protect them.

Chairman, I already expressed in my previous speech the concern of the legal profession about the competition law while the legislation was still being studied, because lawyers were concerned about how legal advice could be provided in this respect after the enactment of the law before their clients could fully understand its content. Hence, I believe the legal profession will exert its utmost to explain these provisions, relevant actions and verdicts on the actions to make it easier for SMEs to grasp the competition law without the need to spend a large sum of money.

Chairman, complicated actions will only arise when the cases involve a complicated mode of operation, a substantial sum of money, or the calculation of the complicated market share of a multinational company. If there are clear court guidelines on complex actions paid by someone else, there will be no need for SMEs to worry. I hope the legal profession can get this done properly to enable the public at large to clearly understand how the competition law will be implemented in the general business environment, so that even ordinary lawyers can offer them useful advice to dispel their worries.

Chairman, during the scrutiny of the Race Discrimination Bill or other anti-discrimination Bills, people from all walks of life expressed fears of being caught by the law inadvertently for alleged discrimination should those Bills be passed, even though they did not mean to discriminate against anyone. Certainly, our solution is not very satisfactory, but we are capable of tackling all these concerns. I often feel that the Government should make more efforts in this connection.

Nonetheless, I am convinced that the law must seek to protect the interest of the general public, and so it should not be that complex. Moreover, we should seek to help the public through the judicial procedure established by us. If the public is wary of the procedure rather than being helped by it, we should examine if we can do better when the Ordinance is implemented.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): I do. Three words. A headcount please.

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summon bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, if it snows in June, there must be grievances. While justice has to be sought for the grievances suffered by Mainland activist, LI Wangyang, I think that this Bill is also full of grievances, one of which was caused by the numerous amendments proposed by the Government. Chairman, a number of Members, including Mr LEUNG Kwok-hung and Mr Ronny TONG, have mentioned, and my calculation has also shown, that the Government has proposed nearly 70 amendments. After all, conducting a joint debate is one way of dealing with these amendments because Members can not only discuss all of them in an integrated manner, but also speak on individual amendments. In fact, not all of them require discussion.

However, if all these amendments are to be put to the vote as a package after a joint debate, a high degree of wisdom is required or one has to be very stupid to achieve this. This is because these amendments cover items of different natures. For instance, in a particular Bill, some provisions may be related to males, females or unisex, it is absolutely logically impossible to put them to a vote once and for all to endorse all the conclusions of the related discussions.

Chairman, I would like to point out that I particularly take issue with the clause relating to the service of documents as to whether they should be served through the Internet or by other means. I believe the Chairman must know it very well that I had spoken on numerous occasions to express my views on the service of documents or the mechanism for transmitting information during the previous discussions on the Fisheries Protection (Amendment) Bill 2011.

Chairman, some of the amendments are purely amendments to the wording, such as amending the Chinese word "凡" as "如", or including two additional Chinese words in certain provisions. All these are technical amendments. As regards the issue of amending "凡" as "如", I will leave it to Yuk-man who will show us later how such wordings should be interpreted.

However, the other amendments involve matters of great significance in terms of principle and the legal system, such as the Court's relevant powers, the handling of appeals, and provisions on the appealing process. Mr Ronny TONG, Ms Audrey EU and Dr Margaret NG …… in particular, Dr Margaret NG has repeatedly mentioned that certain clauses that would be amended, particularly the 100-odd clauses in the Bill, involve issues of principle as well as legal issues.

Chairman, it does not make any sense to vote on the Government's 70-odd proposed amendments as a lot. Certainly, I understand that the Bills Committee might not have any objection during their scrutiny of the Government's numerous amendments and express willingness to support them jointly. But the Bills Committee's approval does not imply other Members' approval. Furthermore, the fact that no member of the Bills Committee raised objection when the Bill was scrutinized by the Bills Committee or when a conclusion was drawn by the Bills Committee does not imply that they had no objection afterwards. Even in the past two days, the relevant organizations had continued to lobby or request us to express our stance towards the Bill. Although these organizations can be described as slow and unresponsive, it might suddenly cross their minds that they must express their views because they did not study certain issues or awaken suddenly only until recently.

I wonder if the Chairman will have an opportunity to exercise discretion later to allow separate voting according to the categories of the amendments. For instance, it does not matter if amendments of a similar nature are voted on jointly. However, if the natures of the amendments are diametrically different, it will become absolutely meaningless to vote on them jointly. Moreover, procedural justice might be undermined, too. I consider this way of handling the amendments absolutely unsatisfactory.

Chairman, I certainly am to blame, for I have not read the Bill in its entirety in advance. I pointed out during the Second Reading debate that I could not put forward any views during the scrutiny of the Bill by the Bills Committee

because I did not participate in the Bills Committee's work. Certainly, I could have attended its meetings even if I was not a member of the Bills Committee. However, after the Bills Committee had completed its scrutiny of the Bill, I found that the Government had retrogressed markedly. The purpose of the Bill in monitoring or affirming fair competition exists in name only as a result of the serious concessions made in the regulation of competition.

I will state my views on the clauses step by step and speak according to their categories by all means. Nevertheless, I will not discuss each and every clause in detail. If certain clauses involve the 70-odd amendments proposed by the Government, I will express my views on the clauses jointly.

First of all, Chairman, I would like to say a few words about the clauses relating to the means of serving the relevant documents and the relevant amendments. It was not stated in the original clauses that the relevant persons should be informed through the Internet or a similar electronic network. But later, the Government proposed amendments to, in particular, clauses 10(1), 25(1), 29 (by adding subsection (2A), 77, section 5 in Schedule 2, section 14 in Schedule 2 and section 12(1) in Schedule 7. Although it was not stated in the original clauses I mentioned just now that the notice should be published through the Internet or a similar electronic network, such means is added in the relevant amendments for transmission of information.

Chairman, I have absolutely no objection to adding a new way of transmission. Chairman, a quorum is lacking. I request a headcount.

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summon bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): Chairman, I would like to continue with my speech on the Government's proposed amendments. In my opinion, the Government's proposed amendments of transmitting messages through the Internet are actually some sort of a retrogression. I hope Members can read carefully the details of the clauses. For instance, according to the amendment to clause 10(1), the Commission may bring the application to the attention of those who will be affected by the decision through the Internet or a similar electronic network or by other suitable means. With the focus of this amendment on "the Internet or a similar electronic network", the Government is basically only required to issue notices through the Internet and it is considered with compliant the requirements in law.

We are all aware of the situation of the Internet. In particular, our powerful State exercises very strong control over the Internet for the preservation of stability. Quite a number of friends of ours have often received notices from Google, stating that the Internet might have problems due to the influence of certain countries, which means that a certain website might be destroyed or hacked, or have its messages turned into rumors. This also means that the Internet is neither trustworthy nor reliable in the present circumstances. Insofar as a provision in law is concerned, if it merely says that the Internet will be used as a supplementary means, and notices will be issued in writing as well as through the Internet …… just as in the discussion held several weeks ago on the Fisheries Protection (Amendment) Bill 2011, the Government vowed and undertook to serve the documents through direct means by not only sending them to applicants by registered mail, but also delivering them in person to fishermen.

In my opinion, the treatment and services afforded to companies by the Competition Bill should not be poorer than those received by fishermen because the Bill involves competition issues and its impact on society and consumer interests will not be smaller than that caused by the Fisheries Protection (Amendment) Bill 2011. In dealing with this issue, the Government …… certainly, I understand that many members responsible for scrutinizing the Bill are well-versed in high technology and hope that the service of notices can be digitized by all means. I perfectly understand this mentality of pursuing change and novelty. However, when interests and legal issues are involved, it is more often than not most reliable to get back to the basics. It is now provided clearly in many provisions in law that the relevant documents must be formally served on the persons concerned before the relevant requirements in law are considered to

have been met. Hence, I am disappointed about the major retrogression perpetrated by the series of amendments made by the Government.

I wonder how the representatives of SMEs and the business and commercial sectors will look at this retrogression. Many proprietors of SMEs, who might have to work as an account clerk, a cashier, a warehouse assistant and even a toilet cleaner at the same time, might not have time to go online to inspect these notices.

I have not seen the representatives of SMEs make solemn criticisms of these major amendments and condemn the Government for discriminating against SMEs. Given that the documents issued by the Government must be delivered by registered mail or in person to an applicant or appellant, why is it stated in the Bill that requirements in law should be deemed to have been met with the service of a notice to an affected person through the Internet? I find that this issue has been handled most frivolously.

The amendment to clause 25(1) also has similar expressions stating that the Commission may publish notices through the Internet or a similar electronic network or by other suitable means. Later, I will evaluable the change to the publication of notices and express my discontent.

Furthermore, the amendment to clause 77 is related to infringement, which is a very severe accusation. Before taking legal action, the Commission is required to issue an infringement notice to the relevant person. If the alleged person undertakes to comply with the requirements stated in the infringement notice, then *(The buzzer sounded)* ……

Chairman, later I will give some additional remarks in this respect and continue to analyse the seriousness of the issue.

CHAIRMAN (in Cantonese): Speaking time is up. Mr Frederick FUNG, speaking for the second time.

MR FREDERICK FUNG (in Cantonese): Chairman, insofar as the joint debate is concerned, just now I spoke on clauses 104, 106 and Division 3 of Part 7 in opposition to the amendments to these three provisions concerning the deletion of stand-alone private actions.

Concerning clause 91 I am going to speak on this time around, the amendment seeks to adjust the amount of the pecuniary penalty downward. Personally I do not agree with lowering the amount of the penalty, but behind this downward adjustment, I can see that the Government is really afraid of businessmen and, what is more, businessmen making use of SMEs as their protective shields. We cannot accept the Government's practice of making continuous concessions.

Chairman, the pecuniary penalty prescribed in the original clause was $10 million. But later, members with business backgrounds voiced opposition on the ground that the penalty was disproportionately severe and suggested a cap at 10% of the global turnover of the relevant undertaking for one year, as in the European Union, the United Kingdom and Singapore. But then, they still considered the penalty too severe and again the cap was amended to 10% of local turnover for one year.

It is evident that the Government was always afraid of these business members from major enterprises, even though the reasons cited by them had nothing to do with major enterprises. Instead, they said that SMEs would suffer a blow. Chairman, why would SMEs suffer a blow? In particular, if a cap at 10% of the global turnover is imposed with reference to the practice in the European Union, the United Kingdom and Singapore, how many SMEs operate global businesses? How can they claim themselves to be SMEs if their businesses are operated on a global scale? Given that SMEs rely mainly on their local turnover, the blow dealt by this amendment is precisely targeted at them. However, according to representatives of major corporations and enterprises, the original proposal will deal a blow to SMEs, thus another proposal should be adopted. However, this latter proposal will precisely deal a blow to SMEs. The Government's continuous concessions are unacceptable. It is also unacceptable that the Government has changed from standing to crouching, then kneeling down and finally on all fours.

For instance, Chairman, the turnover of a multinational motor fuel company must be global. If the pecuniary penalty is capped at 10% of the global turnover of this company, the deterrence thus achieved will definitely be substantial. However, if the pecuniary penalty is narrowed to the local turnover of this company, that is, the turnover of its Hong Kong branch, which will definitely be much smaller and might represent a mere 1% of its global turnover, then the relevant pecuniary penalty will be reduced by 9%. Such a deterrent effect is precisely …… in fact, we have kept saying that it is most important for the competition law to target companies capable of monopolizing the market, especially multinational corporations, and the calculation of the pecuniary penalty on the basis of their global turnover can precisely produce a deterrent effect on them.

In view of the Government's continuous concessions from standing to kneeling down and being on all fours, I find this amendment unacceptable. Hence, I will object to the amendment to clause 91 to the bitter end.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, just now I mentioned the amendment to clause 77 concerning the impropriety of the requirement of serving notice through the Internet or electronic networks only. The issues involved in clause 77 include, among others, requiring the Competition Commission (the Commission) to give notice in respect of contravention of conduct rules before initiating legal action. What the Government has proposed to add in its amendment is to require the Commission to publish infringement notices through the Internet, electronic networks or in any other appropriate manner to inform the public of the contravention of conduct rules by certain enterprises.

Chairman, publication through the Internet and electronic networks can be described as extremely abstract, for certain websites have no viewers at all, such as the webpages of certain senior government officials. Certainly, an alarming number of viewers visited LEUNG Chun-ying's webpage earlier after it had been tampered with by parodists. However, I find that some government websites, be they Facebook or other websites used for publication of news, get only several

hundred clicks over a week. In other words, no one is interested in browsing these websites. The Government has now merely required that the notices, which are supposed to relate to the major legal responsibility of transmitting the messages of the Commission, are to be published through the Internet, electronic networks or in any other appropriate manner. In other words, the authorities concerned can publish the relevant notices through the Internet or similar electronic networks without resorting to other measures to inform the public of the contravention of conduct rules by certain enterprises.

I recall that we had repeated arguments with the Government over the importance of publication of news concerning the amendments to the Town Planning Ordinance. For instance, we had argued with the Government for exactly 10 years over the mode of disseminating the town planning applications by certain consortia, developers, property developers or land owners. After our campaign for exactly 10 years, the Government was finally compelled to make two requirements with respect to information on certain town planning applications. First of all, the relevant information is required to be posted at conspicuous locations of the districts in question. Moreover, a new requirement is specified in the Ordinance that such information must be posted on a notice board no smaller than certain dimensions. Furthermore, the relevant message must be delivered to the affected people by post. For instance, if kaifongs living in the streets in question are affected, they must be informed by post.

How was information disseminated in the past? The relevant information used to be published in the Gazette, which sounds quite authoritative indeed. I believe the situation in the past years was the same as that at present. The Government would usually publish a booklet on Fridays for the publication of various public notices. There is a lot of information in the booklet, including information on tenders, such as tenders for government projects, road closures, public works, and so on. Furthermore, the new requirements made by different Policy Bureaux and government departments regarding various provisions in law, including the new initiatives implemented by the Director of Environmental Protection, Secretary for Transport and Housing or Secretary for Development regarding the various policy areas under their ambit, will be published through this booklet, too. Currently, public notices published in the Gazette will certainly be published on government websites as well.

I do not entirely understand the mindset of the Bills Committee during its scrutiny of the Bill. I hope the Secretary can lobby us again or reply later. The Secretary may not necessarily have to wait until the end before doing so. He might as well respond to my accusation or concern immediately rather than waiting until all Members have spoken before giving his reply. Although this is a consolidated debate, he does not have to give a consolidated response. He may give an instant response instead. Is it because I have not participated in the work of the Bills Committee in scrutinizing the Bill clause by clause that I do not understand the Government's argument, or is the analysis made by me just now simply an unnecessary worry? Very often, the Government will not clearly spell out certain requirements in the law, but it will make certain pledges during the Committee stage or at the resumed Second or Third Reading. Chairman, a headcount please.

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summon bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): Chairman, in connection with the amendments proposed by the Government, just now I mentioned that the manner of disseminating information or giving notice entails an arrangement. In this respect, I would like to say a few words about a town planning case. In fact, over the past decade or so, how a legal notice is considered to be served to the relevant person in an effective and reasonable manner is considered to be quite important because, if that person has absolutely no knowledge of the notice or notification, he will be completely deprived of his right to know.

In the past, there were many examples, just as the Town Planning Ordinance (TPO) I mentioned just now, in which people suddenly found the construction of an enormous building nearby. For instance, they might suddenly find a hotel of several dozen storeys tall. An earlier incident that occurred in Mei Fu Sun Chuen is a case in point. Under the control of real estate hegemony,

the relevant procedure was secretly endorsed with the public and people living there kept in the dark. As such a secret arrangement is allowed under the law, the service of notice is extremely crucial to protecting the interest of the persons concerned. If the notice is given solely through the Internet or electronic networks, how easy it is to control electronic networks to ensure compliance with the competition law without many people actually being aware of it. Given the Government's abundant wealth and enormous influence as well as the ability of powerful countries in controlling the electronic media, particularly all the networks in Hong Kong are currently under the control of major consortia, it is not hard to do so. Moreover, large consortia might precisely be the targets of regulation under the competition law.

We can find quite a number of cases showing frequent collusions between the Government and large consortia from a number of past examples. Certain recent actions in Macao have also clearly shown the extremely close ties between senior government officials in Hong Kong, including Secretaries of Departments, Bureau Directors and the Chief Executive, and the powerful and influential. If not for the informant tips and exposure of scars during the recent Chief Executive election, we might not be able to have such a clear idea of many issues. Hence, we have to rely on the Commission to perform gate-keeping, but its members will definitely have close ties with certain powers that be in the Government because they are appointed by it. Yet, it is very likely for the targets of the competition law to have extremely close ties with these rich and powerful people, too. For instance, a number of professionals appointed as members of the Town Planning Board in the past were actually working for several property developers behind the scene, though they claimed themselves to be independent professionals. Having been awarded many contracts relating to legal matters, design and projects, these professionals are basically colluding with the property developers. Though rhetorically called independent professionals, they are actually working for major plutocrats as henchmen in the Town Planning Board to protect and defend the plutocrats.

Hence, counting on someone in whom we have absolutely no confidence and who might have joined the Commission through mutual recommendations among the rich and powerful, or someone recruited by Secretaries of Departments or Bureau Directors, who might also be among the rich and powerful, as some sort of political reward can be described as futile. It is not only absolutely impossible, but also absolutely unreliable. It was precisely for this reason that

the reliability of the requirement of the TPO of transmitting information was taken so seriously by us at that time. We requested that the most primitive method be used by specifying that such information must be posted on a large notice board of specified dimensions. Moreover, we specified that relevant persons whose interests were affected must be informed by post. In comparison, the current retrogression is extremely worrying.

Chairman, another point I wish to raise concerns the amendment to wording. In a number of areas in the original clauses, similar amendments are made to a number of clauses read out by me just now, including clause 14(2)(a), subclause (2A) added to clause 14, clauses 14(3), 29(3) and 29(4)(a), where "given" is amended as "published". I hope the counsels from the Civic Party can advise us later in this connection. In particular, I know that many of them are following up this Bill.

According to the interpretation of the wording, "give notice in writing" means that the persons affected will be given notice. For instance, in the clauses relating to this amendment, that is, clauses 29(3) and 29(4)(a), it was originally provided that the Commission will give notice in writing in any manner it considers appropriate for bringing to the attention of the affected person the alteration or rescission of the Commission's decision on whether there is a contravention of the competition law by an undertaking of an enterprise, and the persons affected by that decision may fulfil certain duties in not less than 30 days after the notice in writing is given. However, the Government's amendment now proposes to amend it as "publish notice in writing".

Chairman, according to my understanding, "given" and "published" are different in meaning. In this connection, the Secretary may explain to us later. I hope the counsels from the Civic Party can also put forward their views. The word "publish" does not guarantee receipt of the notice by the persons concerned. So long as the information has been published on the Internet or through other channels, the authorities concerned will be deemed to have fulfilled the requirements of the competition law to publish the information to the affected persons, even though they have not received such information. Relatively speaking, the protection for the affected persons will thus be undermined.

Basically, the word "given" in the original clause is to ensure that in giving notice to certain persons, whether by post or by hand, the Commission is required

to give notice in writing, as formally stated, to the affected persons. If "given" is amended as "published", it can then be interpreted as stating the information clearly in nearby places or giving public notice in certain places considered to be likely to be seen by the affected persons. A very simple example is the usual practice adopted by the Home Affairs Department (HAD), whereby a notice board is erected at the village entrance and the information is considered to have been published after a notice has been posted on the board. However, as everyone knows, after the posting of a notice by the HAD, village representatives who do not want the villagers to learn about the relevant message will tear off the notice quickly. As a result, 90% of the villagers have never had a chance to read the information published by the Government. However, according to the content of the provisions in law, the authorities have indeed fulfilled the requirements. As the organ and responsible person specified in the relevant provisions, the authorities should be deemed to have discharged their duty.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(Mr Albert CHAN indicated a wish to speak for the third time)

CHAIRMAN (in Cantonese): Mr Albert CHAN, as you have spoken for more than once, please avoid repetitions and straying from the question.

MR ALBERT CHAN (in Cantonese): Chairman, I have not repeated anything or strayed from the question, I am only ……

CHAIRMAN (in Cantonese): You repeated your viewpoints numerous times just now. Please pay attention.

MR ALBERT CHAN (in Cantonese): Chairman, the content of my speech involves different clauses. My discussion just now was about giving notice through the Internet, but now I am discussing the difference between "given" and "published" which are ……

CHAIRMAN (in Cantonese): Please continue, but I will pay attention.

MR ALBERT CHAN (in Cantonese): …… totally unrelated to the other clauses mentioned just now.

Hence, I oppose this amendment. As I said just now, I will certainly give my support at the voting later on because some amendments are more preferable. But, after all, this is voting. I wonder if the Chairman will make a new ruling or arrangement later. I hope to hear good news from you, so that I will not treat myself as God or a fool during the vote to take something completely contradictory as my single voting preference. That is an utterly irrational act.

I will add a few points regarding other clauses after Mr LEUNG Kwok-hung has spoken.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): Hello, Chairman. I have said earlier that a joint debate and a bundled vote will certainly give rise to troubles. Would you please, I would like to check ……

CHAIRMAN (in Cantonese): Mr LEUNG, you are repeating this point for the third time. According to the usual practice, when we hold a joint debate, we will group all the amendments together which are proposed by the Administration and which have been discussed in the Bills Committee and supported by it, then we will debate and vote on these amendments. However, if any Member should think that in this group of amendments, there may be some different voting intentions regarding some of these amendments, he may request that votings be held separately. Members can make such a request.

MR LEUNG KWOK-HUNG (in Cantonese): Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr LEUNG, please do not express further views on this subject because you have repeated your view many times. If you think that certain amendments should be separated instead of being voted en bloc, you may request it.

MR LEUNG KWOK-HUNG (in Cantonese): Undertstood. Chairman, I did not mean to criticize the joint debate, only that I wanted to say that this kind of grouping amendments together is not desirable. However, you stopped me from speaking. I would say that grouping the amendments is okay, but the way it has been done is bad. That is all. It is like people putting on make-up, but they may do it badly and so they look bad. That is all. But you stopped me, maybe because I did not speak that fluently.

Coming back to the question, I have just talked about clause 10. What is the important thing about it? If a person who is affected by an agreement does not browse the Internet so often — this is because like I said, he may not have the time and I will talk a bit more on that before going on to the next clause — then he may not know about the details of the application. Therefore, he may not be able to make a prompt representation. This may have some permanent effect on his rights. So I appeal here to all those friends who are listening to my speech here to be extra careful and to not vote in favour of the amendment to clause 10(1). The most conventional methods must be used in this case, like using registered mail or recorded mail. This will ensure that the relevant persons can see their minimal rights unaffected in case they do not receive the mail. And then they can make their representations. This is my view.

I was about to talk about clause 14, but I can see that there should be less than 24 persons here. So Chairman, would you please.

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): Mr LEUNG Kwok-hung, please continue.

MR LEUNG KWOK-HUNG (in Cantonese): Now I wish to talk about the adding of subclause (2A) to clause 14.

As in the previous amendment, this is about rescinding a decision. But the content is different. The proposal is that when someone tells the Commission some news, or discloses something to it or inquires about some decision, the Commission has the responsibility to inform that person. This right is different from the addition of subclause (2A) to clause 14 as we are doing now. Why? Because it is related to the rescission of a decision by the Commission. When the Commission decides to entertain a complaint or reject it, it needs to enable the persons who may be affected by the decision to enjoy a sufficient right to know. Of course, people who visit the Commission on this business will know this, and those who do not will not know about it.

Leaving this point aside first, I said when I talked about clause 10(1) earlier that if registered mail is not used, and instead a method which is regarded as appropriate is used, such as informing the persons through the Internet or some other electronic network, it is in fact inappropriate when compared to other methods which we often use and which are safe and can leave behind some proof. In addition, if the person affected does not make a representation within the time limit, he will be disqualified.

Another question is that the Commission has another kind of power and that is, after examining all kinds of materials, it has the power to enter into an agreement. This is a very important power of the Commission. But when it is to exercise this power, it must do one thing. We know that under the Bill, apart from the end-user or downstream consumers who may sue the enterprises concerned, enterprises can also sue each other. Earlier on Dr Margaret NG and Mr Ronny TONG took great pains and shouted at the top of their voices to explain that after this Bill is passed into law, it is likely that those giant consortia which have engaged in anti-competitive conduct may use the law to target those small operators who have not engaged in any anti-competitive conduct.

If the Commission has the right to rescind an agreement and it is not required to inform enterprises affected by that decision and if it does not even consult them, then the rights of these enterprises would be jeopardized. Chairman, I am not blowing my own trumpet, I once proposed an amendment that at least one person from the SMEs or one who is well-versed in SME matters or a representative of consumers should be selected and asked to join the Commission or the Tribunal. But the Administration refused. If this clause is put into force, I am sure problems will arise. With no representatives of this kind in the Commission, how will the enterprises know what will happen to those enterprises affected after this Bill is passed into law and in the practical circumstances of Hong Kong? So it is only right that written notices should be issued to the enterprises and that they should be consulted.

The original clause was drafted correctly, but the amendment is making the text a mess. If the Bill is passed, and when these competitors or persons affected are not informed, it is not a simple question of their rights being infringed upon. Chairman, can you see that? This will not just be a problem to them. We have no precedents for this and it is only after debating and arguing for ages that we can have this Bill. If they are affected and if they are deprived of their rights, or if they are not consulted in the process, it would not only be a loss to them or justice perverted. The consequence is that after going through a legislative process in which we have had heated arguments, arguments on the question of whether to pass the law in haste or otherwise, we fail to gather any experience from what we have done. In view of that, I am bent on my way to propose that amendment and I have urged Gregory SO repeatedly on that. At one time he even considered to allow me to add that amendment. But now he has retracted it. That is why I am particularly sensitive about that point.

For those parties whose interest may be jeopardized, actually, their interest may not be injured actually, only that when they hope to express their views, they must enjoy a sufficient right to know. When the Government enacts laws, it must not act in an arbitrary manner. That is to say, if it thinks that the wording is preferable, then it will never want to add anything to the text. I have heard Dr Margaret NG say that provisions in law should be readily comprehensible and there should not be any other interpretation. Registered mail should be written down as registered mail and double registered mail *per se*. DHL is DHL. Or sending something by mail or by hand. All these should be written down.

Right? Now things are not like that. A scenario will arise with the method used now. If the Commission makes a rescission decision, the question of whether an agreement is exempted or not exempted will have far-reaching implications. This is especially the case for business operators. The question of whether an agreement is exempted will affect their decision to invest or they may dispute and voice their opinion after learning about it.

When there is a new law and it is a law that we do not know well enough, there are bound to be great disputes when it comes into force. The parties in opposition are always arguing, saying that the lawyers are playing a trick on them. Right? Why is it that at this legislative stage, no efforts are made to ensure that no words or sentences are open to incorrect interpretation, and instead, it is stipulated that when the Commission is to exercise its power, it must give other people a right to know?

Chairman, if Members support the view I have just given on the amendment to clause 10(1) — may I ask Members not to make U-turns so often, it is you people who do so, not me — then they should also agree with the amendment of adding subclause (2A) to clause 14. The logic applied to the two cases is similar, but there is no repetition and the applications are different. With respect to clause 10(1), some people may think that when you want to sue someone, you should watch out. And if you do not, it is you who is to blame. On adding subclause (2A) to clause 14, you can see the Government's persistent insistence. It will not say that since the exercise of rights is different, so the responsibility so derived is different. So there is really a difference. It turns out that no matter if you sue someone or if you are sued, it is the same. For the Government, it only cares if it has got enough votes in its hands. Now "Long Hair" is giving his speech with all his pomp and bombast. Who should I fear if I have got enough votes? I should love to hear from anyone who says otherwise.

Here I wish to make an appeal here: Secretary Gregory SO, do not ever do this. These are some very minor changes and they are sensible, but you refuse to listen to us. Do not think that we oppose you all the time. There are times that I only take issue with the Chairman. Secretary Gregory SO, would you please — you have been sitting here for such a long time, and so be kind to your spine, rise and speak. Tell us why. Why do you refuse to give in when it is

just such a minor issue? Will it be the end of the world if you give in? If you can give in, then my vote is yours.

In September we will be begging for votes in the streets like beggars. We will be saying what we have done and for things that we have not done, we will say that we have done them. Those who have clearly lent their support to the listing of The Link REIT are now saying that they oppose The Link REIT raising the rents. They are doing this for votes. Now you have got the votes …… last time there were 100 000 people who entrusted me to vote for you on their behalf.

Secretary, please rise and speak. Stopping being a dumb person. Let me say it once more. Those Honourable colleagues who plan to vote in support of the Secretary should also rise and speak. Do not say that it is so hard to come downstairs when the bell is rung. If only you can listen carefully and if only you can really join the debate and do more practice, you will find that there is great fun in learning.

Chairman, I hope from the bottom of my heart that you could relay to Secretary Gregory SO of your esteemed party that he should rise and speak. It does not matter if your esteemed party will support your party member or the Government, I hope they can also rise and speak.

CHAIRMAN (in Cantonese): Mr LEUNG, you are repeating.

MR LEUNG KWOK-HUNG (in Cantonese): Sorry, I have been repeating. You are just too smart, Chairman. It is almost time, and I decided not to request a headcount. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR WONG YUK-MAN (in Cantonese): Now it is my turn to speak. Chairman, the Government has added a definition for the term "bid-rigging" in the amendment to clause 2, and listed it as the fourth kind of anti-competitive

conduct. We agree to this amendment. Previously in the Bills Committee when the relevant clauses were scrutinized and when such kind of anti-competitive conduct was mentioned, many people had discussed bid-rigging. In fact, not only is it discussed much in the Bills Committee, many people would discuss it in the course of our daily life.

Chairman, I do not know if you have ever noticed that in Taiwan about 20 years ago, bid-rigging practices in construction works were rampant. This was collusion between the government and the business. Maybe bid-rigging still exists now, only that it is not that serious. Of course, the greatest difference between the collusion between the government and business in Taiwan is that in the case of Taiwan, it is a classic example of black gold politics. And the roots of black gold politics can be traced back to Japan. Now, when President MA Ying-jeou who can be regarded as a spotlessly clean person has come to office, things have undergone a great change. People cannot resort to playing with black gold politics in such a blatant manner. But still, the prosecution authorities in Taiwan have brought graft charges recently against the former President of Taiwan LEE Teng-hui and LIU Tai-ying, the former director of the Taiwan Research Institute.

Bid-rigging is indeed very rampant in Taiwan and for every bid-rigging case, there are bound to be some members of the Legislative Yuan involved in it. This is because these members can obtain a lot of information from the officials in the course of their work in the parliamentary assembly. This is like getting much information from say, Secretary Gregory SO. Or they will have debates in the assembly on issues like when there will be a tender exercise for a certain works project, and so on. There is a Hong Kong movie called "Black Gold" and the lead role of a bid-rigging mogul was played by Tony LEUNG Ka-fai. The kind of bid-rigging practices he engages in is terrifying. Some gangsters are called in to amputate people's legs, and so on. That is what they do in Taiwan in bid-rigging.

Bid-rigging is therefore a very common kind of anti-competitive conduct in real life. Our district offices often receive cases of plea for help regarding bid-rigging. These are mostly related to owners' corporations (OCs). I think many directly elected Members must have much experience in that. Bid-rigging often appears when a building is to undergo repair and maintenance works. The small property owners or the OCs are often powerless in the face of these

unscrupulous contractors. Sometimes we would suggest to them that if evidence can be found, they should report to the ICAC. But the cases always end up like stones thrown into the sea. The Home Affairs Department cannot offer them any help. If it is said that the OC concerned should elect another chairman and members or if another management company should be identified, the fact is that after the old ones are gone, the new ones are no better either. Even if many votes for proxies are obtained and an owners' meeting can be called, and even if the OC itself and the management company are replaced, the result is the same and that is, the incoming ones are worse than their predecessors. This is, after all, a problem of institution and a loophole in law.

Some of these unscrupulous contractors would collude with the so-called authorized persons, management companies and those persons in charge of OCs and these people would engage in bid-rigging and price-fixing. Some even take actions to obstruct other contractors from taking part in bidding. Some of these people bid under the names of different companies and a deceptively intense situation of bidding is thus created. And the OCs will knowingly or unknowingly take part in it. Of course, some of these OCs take part knowingly for they are reaping some gains out of the activity. And if they have a part to play, then they will be aware of the whole thing. Some of the OCs make a misjudgment of the market price unknowingly and in the end the small owners will have to pay a more expensive price to undertake the repair and maintenance works of their buildings. In the end, these small owners will incur great losses.

When I receive this kind of cases in the districts, I would offer help to them for follow up. And so I am very experienced in that. But after I have handled the case, I would usually have displeased some people. Some of these people have a gangster background and they would make threats. So we would offer our help to the OCs and tackle problems arising from bid-rigging in respect of maintenance works. We would canvass votes for them, change the OC committee and management company, and so on. After we have done all these, some people may intimidate us. It is useless if we report the case to the police. It is thus evident how serious the problem of bid-rigging is indeed. The Home Affairs Bureau does not have counter-measure in terms of policy. I do not know if before adding the term "bid-rigging" in the amendment to clause 2 and listing it as the fourth kind of serious anti-competitive conduct, Secretary Gregory SO has looked into the problem of collusion between OCs of buildings and those rogue contractors and management companies, with the result that the small owners will

have to pay much more money to carry out repair and maintenance works. I do not know if the Secretary has looked into that or if he thinks that merely by adding the term "bid-rigging" to the law and classifying it as a kind of serious anti-competitive conduct, the problems that centred around bid-rigging will all be solved.

I will talk more because I have got plenty of time. Now the Government has classified bid-rigging as a kind of serious anti-competitive conduct but not a criminal offence. So this is also a problem. I will elaborate on that later and I will definitely not sidetrack. Bid-rigging is a serious breach of the principle of fair competition. What baffles us is that at first the authorities did not include bid-rigging in the Competition Bill and it was only when the Government had introduced the six sensational major amendments last year — Secretary Gregory SO, the incident has left an indelible memory on us — which made a clear distinction between hardcore and non-hardcore anti-competitive activities that the definition of bid-rigging is included in the Bill.

Now I would like to talk about a case. Earlier on I have said that when buildings undertake repair and maintenance works, it is usually the small owners who will suffer. Of course, some people may reap huge gains from that but the small owners are victims. I do not know if the Secretary is aware of the fact that the Government was once the victim of a case of bid-rigging. There is this case which was brought before the Court of Final Appeal and it is called *HKSAR v Chan Wai Yip and others* with the case number FAAC No. 4/2010. Does the Secretary know of that case? He is looking at me with this bewildered expression, without noddy. I would take it to mean that he does not know about it. I must make a clarification here, or else Mr Albert CHAN would raise a point of order later. The person called CHAN Wai-yip in this Court case is not our Albert CHAN. The case took place in 2004 in Tai Po Market.

Chairman, please do a headcount. How can it be that no one is listening to me when I speak?

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): Mr WONG Yuk-man, please continue.

MR WONG YUK-MAN (in Cantonese): Chairman, another 11 minutes have gone. I think Secretary Gregory SO could rest assured. All the Members from the pan-democratic camp are here, because they are more afraid than he is of an abortion of the meeting. So it looks as if everything is safe. But if it is thought that the examination can finish this evening, I can forecast that it is not going to be that way.

It is a great shame that when an important Bill like this has come to the Committee stage and when so many amendments are put forward, no one makes any speech. Buddy, I am not filibustering; I am speaking. And my speech is all about the details of the amendments.

Chairman, I mentioned bid-rigging just now. In the Administration's amendment to clause 2, a definition for bid-rigging is added and it is classified as the fourth kind of serious anti-competitive conduct. The People Power agrees with this amendment.

I have just said that victims of bid-rigging are not necessarily members of the public, for the Government can also be a victim. An example is the case concerning a man called CHAN Wai-yip. This case happened in 2004 and it was brought before the Court of Final Appeal in 2010, entitled *HKSAR v Chan Wai Yip and others*. I want to clarify on your behalf, that person is not you. Chairman, that I have picked this case to talk about it proves that we are not doing this for the sake of filibustering. It is much better than some people who sit here like dumb persons, not going to talk.

In the tender exercise in the market in Tai Po Market, the Government commenced a round of closed tender exercise. What is meant by a closed tender exercise? At that time, only the existing tenants of the market were allowed to make bids. And so the number of tenants making bids was limited and quite a large number of stall owners made an agreement among themselves that only one person from one stall would bid. The result was that a vast majority of these stalls went to bids at a low price and each of these stalls went to the only person who made the bid, namely the owner. This is a typical case of bid-rigging and price-fixing. After the case was exposed, the Government felt that it was

short-changed as the bidding price was lower than the market price and so its interest was jeopardized. So what did it do?

CHAIRMAN (in Cantonese): Mr WONG, the example you are talking about was mentioned by two other Members already.

MR WONG YUK-MAN (in Cantonese): I have to do so because I have got another ……

CHAIRMAN (in Cantonese): Though the story is well-told, please make it concise.

MR WONG YUK-MAN (in Cantonese): All right. It is because I was not listening earlier. No problem, it is okay. If you think I should not talk about it, I can tell you another case. See if anyone has mentioned it. I must say you really have a good memory.

About corruption with respect to the repairs and maintenance of old buildings, I think I have to revisit that case again. This is because they come under the same piece of legislation. We all know that in that case, the stall owners in the Court of Appeal and the Court of Final Appeal were awarded the case and they were not held criminally liable. This case shows well the loopholes in the law and the most important point is that after the case in 2004, the Government has never done anything to remedy the situation. I am not repeating anything, am I? Why has nothing been done to remedy something that happened in 2004?

Of course, the system we have, that is the legal framework we have under the Competition Bill, is not similar to the so-called "dual-track approach" adopted in Canada. In the Canadian model, there is criminal liability as well as civil liability. In Canada, enterprises that are found to have breached competition law have to make compensations for civil claims and they will also have to face criminal liability, Chairman. So I would think that if the Government finds bid-rigging unacceptable and if it wants to add this to the Bill and classify it as

one kind of serious anti-competitive conduct, even to the extent that warning notices would not be applied, then there is really a case to undertake a review of the criminal law concerned. For after all, this is really better than the Government trying to sue people with conspiracy to defraud the Government, right? The case was clearly one of bid-rigging, but these people had not broken any law. But the Government wanted to sue these people for fraud. Then the Government lost the case and it was put to shame. When the Government lost this case in 2004, it did not reflect on that or amend the relevant law. And now it has introduced this Bill, but falls short of criminalizing bid-rigging which is anti-competitive conduct.

I have talked about the problem of repairs and maintenance in old buildings. With respect to this problem, sometimes it can be said that the Government is digging its own grave. Or it can be said that it is making way for other people to reap a huge profit by bid-rigging. Do Members still recall that the Government once introduced a scheme through the Hong Kong Housing Society (HKHS) to help the owners of old buildings in repairs and maintenance works and that scheme is worth tens of billion dollars? The result is that this scheme is seen by these unlawful elements as a piece of fat meat, and bribery and corruptive practices are employed in fixing the award of these works contracts. Then the ICAC opened a file and commenced an operation called "strong wind" in effect and a graft syndicate was cracked. That syndicate was a one-stop syndicate and dozens of staff members of the HKHS, contractors and property management companies were arrested. It was suspected that the offer and taking of bribes and bid-rigging were involved in the tender exercises for the maintenance works of old buildings. A total of 17 buildings were involved, with the value of the works contracts totalling $20 million. The operation showed that at times though some government policies were introduced with a good intention, it had some large loopholes open to exploitation by the unlawful elements. It was the original intent of the Government to roll out a scheme to assist owners of old buildings to undertake maintenance works and a sum of $3 billion was earmarked for that purpose, but in the end the money was plundered.

So at times this is not due to a problem with the Government but the lack of co-ordination among government departments that this kind of situation arises. I am sure I can cite many more examples on that point. But as time is running out, I will talk with you in the next turn.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, I wish to add a few points to what I said just now on the question of a notice being "given" and "published". Chairman, when I spoke earlier on the some 70 amendments proposed by the Government, I had asked if there was any chance to vote separately on those amendments which were unrelated or those which I would have a different voting intention when voting was to take place later on. It would be a great favour if the Chairman could consider this suggestion.

Chairman, coming back to the question of "given" and "published", my assistant has found some information on that. In the laws of Hong Kong, the word "given" appears more than 500 times. Generally speaking, when referring to the sending of papers to people who may be affected by government policy and those papers may have a great impact on these people, the word "given" is used to describe such acts of transmission. So "given" implies that government departments have an obligation to enable the persons concerned to receive the relevant papers and to assume that these people would get them.

For example, in the Waste Disposal Ordinance, it is stated clearly that: "Where a notice is given ……, the person to whom the notice is given may, within the period of 30 days after such notice is given, make written submissions to the authority by whom the notice was issued as to why any new or amended terms and conditions should not be imposed or as to why the licence should not be cancelled. (Amended 6 of 2006 s. 16)"

As to the English term "published", it appears less than 200 times in the Hong Kong laws. The meaning of that term is that the Government may unilaterally ― it should be noted that it is unilaterally ― print and release documents. That is to say, the Government does not have to reach any agreement or make any arrangement with any organization or person and it can do whatever it likes. It means that the Government may print or distribute documents on a unilateral basis and it is not responsible for ensuring that the relevant persons will receive the documents. All that is required in this act is to release the documents outside the Government and once this release of documents is done, the Government's responsibility in transmitting the documents would be deemed to be discharged. In other words and to a certain extent, if this

is the approach taken by the Government, those persons affected may not be aware of the act and even if it is proved that the affected persons does not have such knowledge, the Government will not be accused of having contravened the relevant requirement.

As an example, in Chapter 418 of the Laws of Hong Kong, that is, Planners Registration Ordinance, and on the publication of disciplinary orders, the arrangement to "give" (serve) and "publish" such orders is used. I have said before that the amendments made by the Government on this occasion are a retrogression. I would not repeat that point. So we will vote against these amendments. Chairman, if in the voting later, those affected parts of the Bill, such as clauses 10, 25, 29, 77 and sections 5 and 14 of Schedule 2 can be singled out and put to vote separately, then it would be a great favour done to us. This is because we oppose these parts.

Chairman, on the parts I have just mentioned, we are willing to vote on them *en bloc*. The purpose is to show our sincerity and that we are not trying to drag things on or filibuster. If we request that each of the amendments be put to vote separately, then people would accuse us of causing delays. I am willing to put those amendments I have mentioned to vote as a group. This is because the logic and principles behind this group of amendments are about the use of the Internet and about changing the term "given" to "published", which is unacceptable to us.

Chairman, Mr WONG Yuk-man has talked earlier about bid-rigging. I have pointed out that we oppose amendments relating to the use of the Internet and "given" and "published". However, with respect to bid-rigging, we will render our full support to it. But I wish to remind the Government that even if the drafting of the clauses as it is now is not bad, it would still be difficult for one to be certain about what bid-rigging is.

Chairman, I have read the relevant clauses carefully and found that basically they are trying to set out the scope and acts concerning bid-rigging or serious anti-competition conduct. But Chairman, from past experience we know that if we want to identify acts of bid-rigging substantiated by facts, it would be very difficult adducing evidence or testimony. Even if such conduct is exposed in the end, it is very likely that this happens because those parties involved are informing against each other and there is an uneven distribution of gains in the company or organization concerned. Or that it may be due to some personal

reasons such as when someone is addicted to gambling and he does not share the money made with other people. Or as this is often the case, that is, there is some internal conflict between all those involved in the unlawful act and in the end someone tips off or becomes a prosecution witness for the ICAC and so the matter is exposed.

During the past decade or two and as what we have seen at the district level, in some tender exercises, especially problems related to the repairs and maintenance of old buildings and housing estates, we can see that these problems arise not just because of the tender exercise or any secretive agreement or collusion among contractors but often ……

(Mr WONG Yuk-man pointed out that a quorum was lacking)

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): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): Chairman, given the 10-minute pause, my thinking has started to cool down, and I need some time to organize my thoughts.

Chairman, with regard to clause 2 of the Bill, the amendments proposed by the Government seek to rectify the serious anti-competitive conduct of bid-rigging. This is absolutely a good thing, but given the complexity of bid-rigging, the problem absolutely cannot be rectified simply by making these provisions. As I said earlier on, it is often the case that bid-rigging involves relationships among people, and it often relies on reports made by people whose interests are involved before evidence can be obtained.

The so-called bid-rigging or the use of controlling power to obtain a contract involves a tripartite relationship which consists of firstly, the organization representing the owners, such as the owners' incorporation (OC) or

the management company; secondly, the professionals; and thirdly, the contractors. When carrying out works projects, the management company or the OC will usually appoint an authorized person to co-ordinate the works. Authorized persons have an intricate and complicated relationship with contractors, and they have ties with many contractors. When authorized persons are commissioned for certain projects, they will, as requested, invite the required number of contractors which they consider to be qualified to submit bids for the projects. So, those contractors already have a tacit understanding among themselves, and they basically know who can submit bids. These examples abound, but it is impossible or quite difficult to find evidence to prove that conspiracy or a breach of regulations is involved.

Therefore, even if these acts are defined as anti-competitive conduct under these proposed provisions, if the guidelines for tendering are not improved to be fairer and more impartial, and despite the support of the HKHS and the Urban Renewal Authority — It is proven that in many cases, people in these organizations are involved in conspiracy. There have been such examples before.

Chairman, some of the cases of bid-rigging that we have come across can be outrageous, and let me cite these cases purely for reference by the Government in the hope that it can handle these problems in a better way. Some of the practices appear to be very fair on the surface. For instance, when some companies have submitted their bids, the OC's committee responsible for handling the tendering exercise can set up a working group consisting of five or six members. A marking scheme is adopted whereby each of the members has questionnaires with them. They will interview the tenderers individually, put questions to them according to the questionnaires and make records of their answers. The company that answers the questions well and correctly certainly scores higher marks and will ultimately be selected and appointed to carry out the projects.

On the surface, this practice is fair, impartial and objective, and there is no problem with it. But in some cases, some companies could give rather accurate answers to questions not related to the projects. For example, members of the working group may ask the tenderer how many parking spaces there are in the estate. The number of parking spaces actually bears no direct relevance to the project but some contractors still knew the answer and were hence given higher

marks and awarded the contract ultimately. Therefore, while a system seems to be objective on the surface, it does not mean that no conspiracy is at work. Afterwards, there was news spreading around that some people in the OC have ties with the successful bidder. Everyone knows that the contractor who knew the answers to those questions must have been informed of the questions beforehand, or else they could not possibly know such information.

Therefore, the tripartite relationship among the management company or the OC, the professionals or authorized persons, and contractors involves countless ties among them. It is absolutely impossible for such acts to be addressed simply because it is provided in the Bill that they may constitute a breach of the law. What makes it farther from perfection is that in many cases, even though a breach is substantiated, it may not necessarily amount to a criminal offence liable to imprisonment, meaning that deterrence is all the more lacking under this law.

In this connection, although we accept and support the amendments proposed by the Government to clause 2, I must point out that the Bill still has many defects, and there is still a very long way to go before achieving the objective of improving or prohibiting bid-rigging full scale. Very often, the formulation of codes of practice and involvement of the relevant parties, especially direct involvement of the ICAC can help deter authorized persons or people with powers from abusing their powers and transferring benefits to certain organizations to the detriment of consumer interests. Rightly as Mr WONG Yuk-man said, those whose interests will be jeopardized may even include the Government.

We have received many complaints before and in the end, no prosecution can be instituted because of a lack of evidence. But many companies who had submitted tenders pointed out subsequently that many signs have shown that the successful bidder has very suspicious relationship with the relevant persons, including some people in government departments. However, owing to the lack of evidence, it is often extremely difficult for prosecutions to be instituted. It is hoped that following this Bill …… We also believe that all the amendments proposed today will be passed, but do not think that these problems will be resolved after the enactment of the Bill. More often than not, the passage of amendments to a Bill is only the beginning of another nightmare.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(Mr LEUNG Kwok-hung stood up)

CHAIRMAN (in Cantonese); Mr LEUNG Kwok-hung, speaking for the third time.

MR LEUNG KWOK-HUNG (in Cantonese): What? Chairman, what did you say? I could not hear you.

CHAIRMAN (in Cantonese): You are speaking for the third time.

MR LEUNG KWOK-HUNG (in Cantonese): I am speaking for the third time. I know it. Chairman, now I have to talk about an amendment to clause 2 in page 3 of the paper circularized to us by the Secretariat. What is this amendment about? According to the text of this amendment, it seeks to include the definition of "bid-rigging" in the definition of "serious anti-competitive conduct". The legislative exercise certainly has ……

CHAIRMAN (in Cantonese): Mr LEUNG, I must remind you that when a Member speaks, he should avoid repeating not only his personal views, but also the points already repeatedly made by other Members. As you know, Mr WONG Yuk-man and Mr Albert CHAN have spent a lot of time speaking on the issue of bid-rigging in their speeches earlier on.

MR LEUNG KWOK-HUNG (in Cantonese): I see, but I did not listen to their speeches.

CHAIRMAN (in Cantonese): Whether or not you have listened to them is another matter. But they have indeed discussed this issue rather thoroughly when they spoke in this Chamber.

MR LEUNG KWOK-HUNG (in Cantonese): I see. If I have made any repetition or strayed from the question in my speech, or if I have shown to be heedless of your advice, could the Chairman please make a ruling?

CHAIRMAN (in Cantonese): I will.

MR LEUNG KWOK-HUNG (in Cantonese): I thank the Chairman for his teaching. Chairman, on the question of bid-rigging, judging from the text of the clause, what it is all about is actually very simple. It means an agreement made by two or more undertakings not to submit a bid or tender, with the purpose of getting their desired price. It is just this simple. The clause is written in an excessively winded manner, but this is actually what it means. Firstly, what meaning is there in legislating to provide for the definition of "bid-rigging"? It is like another provision made in the same clause under the Competition Bill, which provides that "goods" includes real property, meaning that real property is also be covered.

With regard to the provision on two or more undertakings, in the case of real property, for instance, an agreement made between two or more undertakings can involve an organization named the Hong Kong Housing Authority (HA) and a company called The Link Management Limited. This is an actual example. They were both engaged in the sale and purchase of real property, and "goods" includes real property. The car parks and shop spaces under the HA should be covered by this definition, and this should not be wrong. An agreement made between them on a certain price is indeed a fact. Since 2004 when the Hong Kong Government was handling the listing of The Link REIT, the HA did enter into an agreement with The Link REIT, and no third party was allowed to take part in it.

Chairman, back then I said to "Tai Pan" that he and I should chip in money to buy these properties since the price was so cheap that they cost only some $20 billion, and Lok Fu Plaza alone should already cost more than this price. But we could not do so. With regard to these real estate properties, two or more …… Indeed, there could be more than two undertakings involved, because the Hong Kong Government also had a part to play since it was the Hong Kong

Government that handed these properties to The Link REIT, but it could, of course, enjoy exemption ……

CHAIRMAN (in Cantonese); Mr LEUNG, are you speaking on the issue of bid-rigging?

MR LEUNG KWOK-HUNG (in Cantonese): Of course, I am speaking on the issue of bid-rigging. Could this not be a case of bid-rigging? An undertaking named the "Hong Kong Housing Authority" and another undertaking named "The Link Management Limited" made an agreement on properties to be sold at a certain price. I remember that the consideration was some $20 billion and perhaps we can confirm it with the DAB, for it supported this proposal back then. I was the opposition, and I do not remember how much it was. I think they were some $20 billion worth of assets.

Under this newly added definition, there is the provision of "…… one or more of those undertakings agrees or undertakes not to submit a bid or tender in response to a call or request or bids or tenders", and in the incident of The Link REIT back then, other people would not or could not submit a bid, and for this reason, I think this incident is certainly covered by the definition of "bid-rigging". What meaning is there to endorse only today the addition of this definition proposed by the Government? Despite the unanimous public opinion, a certain public body or statutory body made an agreement with an overseas company on the acquisition of our assets to make a fortune, and the valuation made by this statutory body of the prices of these assets could not even be challenged.

Chairman, as you know, we could not challenge the validity of that valuation of some $20 billion. We did question whether it was proper because that was public coffers. I remember a staff member of the Housing Department attended the meeting. I have forgotten his name, but I asked him when he could give me an answer. He replied that it would be at the time of the roadshow. I even asked Mr LEE Wing-tat, who is not in the Chamber now, what a roadshow is. He told me that it is a procedure for launching new stock, not the "Roadshow" that we watch on buses. From this we can see that this incident

entirely meets the definition of bid-rigging, and they had completely turned a blind eye to this.

I understand that Chinese law has no retrospective effect. This, I do know, and there would be great troubles if it has retrospective effect. But the problem is that it was not the first time that the Government had enjoyed exemption by engaging in bid-rigging through a statutory body.

The case of land sale is just the same. I have staged protests at the auction venue for many times because land sale is primarily feeding on the blood of Hong Kong people. The property developers that take part in land auctions all have a tacit understanding among them, and this can again meet the description of "an agreement made between or among two or more undertakings". We all know that property developers in Hong Kong at least include four prestigious families, just that they have run out of luck recently. They have also entered into an agreement among them, and even the Government's invincible stroke of the "Application List" system can do nothing about them. This measure was introduced because when the Government put up land for auction, it saw that the property developers on the auction floor were winking at each other, not making bids, just as Members always give signals with their hands to exchange news with each other, and the Government, therefore, devised this system in response.

The Government's counter-measure is to stop putting up sites for auction and require property developers to apply for the sites instead, thereby creating demands in the market. If necessary, property developers will have to submit tenders, in which case at least the property developer that has triggered the site will submit a tender. If another property developer named "Leung Kwok Hung Real Estate Group" is interested in contending with "Albert Chan Real Estate Group", both will have to submit bids and they will contend with each other. The Application List system is meant to be a solution to the problem, but it turned out to be useless.

When no site is provided, a property developer can apply for a site and then adopt the same practice and that is, "making an agreement between or among two or more undertakings". After an agreement is made, they can either refrain from submitting a tender or simply put on a show by conspiring to submit bids up to a

certain price level. As we can often see on the television, depending on the prevailing conditions in the property market and if the market price is $7,000 per sq ft, over a period of three years and when factoring in the construction cost, the estimated selling price should be $12,000 per sq ft and they will then make it the goal of their bidding.

Therefore, property consortiums are much cleverer than the Government which makes legislation, for they are sometimes happy even to suffer a loss. For example, when they have a large stock of residential flats to be put up for sale in the market, and given that the bread will be burnt if it is not taken out of the oven, they will push up the price of flour. Sometimes they will buy flour at a low price and store it, so that they can make expensive bread with cheap flour. When the bread will soon be taken out of the oven and as the high price of flour can create the effect of a "sky lantern" in that the air inside will drive the lantern to rise, they can, therefore, fool the Government by bid-rigging in such a way.

Chairman, what is the purpose of legislation? The purpose is not to give us a chance to hold discussions or press the button to cast a vote, but to deal with an actual situation, right? Although the statutes are put on the bookshelf most of the time, they can cause destruction once they are taken out by Dr Margaret NG. That is the most amazing function of the statutes.

The Government has now proposed the addition of the definition of bid-rigging …… sorry, I have presbyopia, and let me read it more clearly …… subclause (a)(i) alone is already useless, not to mention paragraph (ii). First, it is useless to curb the killing of the mother in the name of the father, that is, seeking private gains in the name of public interest. The HA, the Hong Kong Housing Society and the Urban Renewal Authority (URA) are all publicly-funded bodies, and the Government further provides support to their market power by way of legislation. The URA can be said to be totally unchecked in its resumption of residential premises. I have for many times visited residents in Sham Shui Po whose flats are resumed, and I was even driven away by those public security officers …… sorry, not public security officers, but security guards. They said that they were carrying out the resumption of residential premises and did not want to hurt me.

I would like to ask: With regard to the first paragraph of the definition, when a statutory body …… Do I have to request a headcount when speaking of statutory body? Alright, Chairman, it is not a statutory body requesting a headcount. It is legislator LEUNG Kwok-hung requesting a headcount.

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): Mr LEUNG Kwok-hung, please continue.

MR LEUNG KWOK-HUNG (in Cantonese): Speaking of bid-rigging, property developers will sometimes speculate on and push up the prices of flour in order for bread to be taken out for sale, and they will sometimes suppress the price of flour and engage in hoarding, in order to profit from the price differential between flour and bread. All these are bid-rigging acts. They are all the same, whether it is the former case of killing the mother in the name of the father, claiming that the mother is killed for the father's sake in an attempt to seek private gains on the pretext of public interest, or the practice of openly neglecting the Government and taking advantage of the Government. So, on this question, I think if the Government can take on board my views and set out such a case in most express, specific terms in the legislation, the definition of "bid-rigging" will be perfectly adequate in its coverage, capable of preventing the bestial act of killing the mother in the name of the father.

I am not the first to propose the idea of setting out specific acts in legislation. I remember that in respect of the legislation on same sex marriage, the Government even copied an entire precedent into the legislation direct. Buddy, the situation back then was different from the present case now. That time, the people's living was involved and certainly, that could not be allowed. But this time around, we have to combat the "big predators" and the beasts that kill the mother in the name of the father, and this act certainly has to be set out

clearly in the legislation. Killing the mother mistakenly is something that should not be done even if it is ordered by the father.*(The buzzer sounded)*

This is all I wish to say.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(Mr WONG Yuk-man stood up)

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, speaking for the second time.

MR WONG YUK-MAN (in Cantonese): Chairman, concerning the Government's amendment to clause 2(1) which proposes to include bid-rigging as a kind of serious anti-competitive conduct, we have pointed out earlier that these examples indeed abound. Therefore, we call on the Government once again to really consider seriously making amendments to other relevant legislation. The Government has only included bid-rigging in the Competition Bill (the Bill) as serious anti-competitive conduct but such conduct is not subject to criminal liability, and it has only replaced the original …… We all expressed grave concern in the Bills Committee then, and many people also pointed out that since a warning notice is applicable only to non-hardcore anti-competitive activities, it is definitely inappropriate to adopt the warning notice mechanism for bid-rigging which is serious anti-competitive conduct.

(THE CHAIRMAN'S DEPUTY, MR FRED LI, took the Chair)

The problem is reflected in the precedents cited by us earlier on, one of which is a case in Tai Po in 2004. The case was brought before the Court of Final Appeal, and the Government still lost in this case. There was obviously a case of price-fixing and bid-rigging, and the Government could not institute prosecutions under a relevant law. Prosecution could be instituted only for conspiracy to defraud but the Court acquitted the defendant of conspiracy to

defraud. However, is bid-rigging a conspiracy to defraud? If such an act has practically created such an objective effect, that will amount to conspiracy, because a person conspired with another person for the purpose of price fixing and successfully bid for a stall space at a low price. If this person can successfully bid for a stall space at a very low price, somebody will naturally suffer a loss. In citing this example, our purpose is to point out that the Government will suffer a loss. The Government had suffered such a great loss but it could do nothing about it and so, it could only force its way through by charging them for conspiracy to defraud. This will lead to a problem and that is, the Government can elevate any matter to the political plane anytime and lay charges for conspiracy to defraud.

Therefore, bid-rigging is considered as fraud because someone else's interests are damaged. If a person who should not have obtained such great interests gets greater interests than those expected by himself or those that should be obtained by him, someone else will naturally suffer a loss. This obviously violates the principle of fair competition, and this person should bear criminal liability. But despite the inclusion of bid-rigging in the Bill, such conduct is not subject to criminal liability.

We, therefore, hope that the Government may as well further consider whether there are remedies. We agree to this amendment in principle which proposes the addition of the term "bid-rigging" under clause 2 to include it as one of the four serious anti-competitive activities. But judging from the many examples in the past, there have been so many precedents or facts and particularly, for the many disputes relating to OCs that Members of the Legislative Council have often come across in the districts, they are often about repairs and maintenance works involving bid-rigging and price-fixing, and small owners have to pay a dear price as a result. They have often sought assistance from Members of the Legislative Council, but what can we do? We usually tell them to convene an owners' meeting in accordance with the law. Under the existing legislation, proxies can be collected to see who can obtain a greater number of proxies. When they have a sufficient number of proxies, they can overthrow the OC and replace the management company.

However, as I said earlier on, this is still unable to resolve the problem of bid-rigging, because while a tiger is barred from entry at the front door, a wolf comes in through the back door. While a tiger is sent away, a wolf is let in, and

this is actually a vicious cycle that never ends. From my experience in handling these cases, I have assisted the owners to resolve their problems which are, in their view and as we can see from the facts, repairs and maintenance problems. In the end, the OC was dissolved and a new OC was subsequently formed. But after the new OC has replaced the management company with a new one, the same problems recurred. What we did for them has turned us into the "bad guys". So, in the final analysis, this is a question of legislation, and not only ……

MR ALBERT CHAN (in Cantonese): Deputy Chairman, I request a headcount.

DEPUTY CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(While the summoning bell was ringing, THE CHAIRMAN resumed the Chair)

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese); Mr WONG Yuk-man, please continue.

MR WONG YUK-MAN (in Cantonese): Chairman, regarding the amendment to clause 2 by the Government, which is on the inclusion of bid-rigging, I have not finished with my speech. Maybe you were taking a break or a meal, without listening to my speech.

Not only the public but also the Government will suffer loss because of bid-rigging as illustrated by the precedents cited just now. However, the Government will also suffer loss even though they neither engage in bid-rigging nor submit tender or even when the tender process is dispersed with. For instance, the Wharf Holdings Limited (Wharf) has renewed its lease of the Ocean Terminal lot at a cheap premium of $7.9 billion for 21 years. It is not

bid-rigging. But it is bid-rigging in disguise as there is only one single tender. This has nothing to do with any party except the Lands Department.

The Government has leased the land to the Wharf at a cheap premium of $7.9 billion for 21 years. What is the current monthly rent of the lot? Years ago when I decided to run a business, I was told in a reply to my enquiry that the cheapest monthly rent of a shop on Canton Road was $1,000 per sq ft. However, the Government has leased the relevant lot to the Wharf at $30-odd per sq ft on average. No tender has been submitted although superficially it is a tender exercise. Nor is it illegal. It is blatant collusion between the Government and business as well as transfer of benefits. Chairman, how outrageous it is. Speaking of bid-rigging, I will think of examples in which no tender has been submitted.

Bid-rigging is certainly abhorrent, but situations in which tender is not required are equally nasty. In fact, these are tantamount to bid-rigging. The lease is granted to the Wharf as the single leasee. Why is the lease granted to the Wharf? It is because the Wharf is the sitting leasee, who has been discussing the matter with the Government. From this, we can see the operation of the tender system. If no improvement is made by way of legislation, such anti-competitive conduct cannot be eradicated. Therefore, we hope that the Government will also consider this problem before proposing the amendments.

Sometimes, the Government will form a cocoon round itself of its own making, thus resulting in a vicious cycle. In 2005, for example, there were 978 reported cases concerning building management. This is a specific number of reported cases, many of which being related to bid-rigging in building management. Large amounts of money are involved in bid-rigging for maintenance works. Many architects, outsourced maintenance contractors, building management consultants and engineering consultants are also involved. These are simply syndicated corruption offences.

The Government prosecuted them for corruption. But in fact, the whole idea was bid-rigging at the beginning of their plan. The Government prosecuted them for corruption probably because some civil servants had taken bribes. The Government might prosecute them for fraud, which is a criminal offence. Their original conduct was bid-rigging but the Government prosecuted them for fraud.

To put it bluntly, this is basically forced conviction. Nevertheless, bid-rigging has really led to loss suffered by some people.

Why did the Government lose the court case in 2004? It is because the Government prosecuted them for fraud, but in fact, they had engaged in bid-rigging. From the legal perspective, nothing can be done in respect of bid-rigging. So, on this issue, I hope the Government …… Certainly, we will support the amendment as it shows that the Government has heeded a lot of views in the Bills Committee.

In discussing other amendments, I will quote the views of many concerned groups in public hearings. For example, in discussing the exemption for statutory bodies, I have prepared materials containing diverse views. Why are some people in favour of granting exemption to the Trade Development Council but some people, including some legislators, strongly oppose this idea?

I remember that diverse views were expressed during the discussion on bid-rigging in the Bills Committee. Certainly, we can adhere to our stance in discussing the relevant issue in the Bills Committee because many Honourable colleagues are basically the spokesmen of various interested parties. As we can see it, no Member of the Liberal Party is present in the Chamber. Why? Because they harbour deep-seated hatred of this law.

As I have noticed, they claimed that at the Second Reading …… Chairman, please let me say a few words because we do not see any political party which represents the middle class, SMEs and even the business sector. In its prime years in the Legislative Council in the colonial era or at present, this political party is simply well-matched with the existing DAB, which is a ruling party in disguise. This political party comprises three legislators only albeit as many as 10 in the past. However, none of them is present.

As the Competition Bill is deeply related to their sector, Secretary, I think you really have to reflect upon why you have scared away these three Members. What have you done to make all Members of the Liberal Party absent from the meeting? After joining the Second Reading debate on the Bill, all of them are absent in the Committee stage. Why? Eventually, it is necessary to ring the bell to summon Members each time …… Chairman, please do a headcount.

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(While the summoning bell was ringing, THE CHAIRMAN'S DEPUTY, MR FRED LI, took the Chair)

(After the summoning bell had been rung, a number of Members returned to the Chamber)

DEPUTY CHAIRMAN (in Cantonese): Mr WONG Yuk-man, please continue.

MR WONG YUK-MAN (in Cantonese): Deputy Chairman, the speaking time now displayed is correct. Just now I saw that it was zero. Doesn't it mean that I have to start all over again?

Let me continue to talk about the Government's amendment to clause 2, which is on the inclusion of bid-rigging because I have not finished yet. I will talk about another issue after finishing this part in a few minutes.

Concerning …… I also have to take a meal but I do not have the time to do so. Each one of you has also gone out for dinner. I will discuss this with the Chairman later whether it is possible to arrange for dinner time for me. Otherwise, I would have to keep on speaking. Buddy, there are just three Members who will speak on this issue. Is it not ridiculous that only three Members are speaking on such an important piece of legislation? The meeting is broadcast live by television. That is great, as people will know …… by the way, your performance as a Secretary has been poor. The Legislative Council had discussed the minimum wage for a few days. The discussion on the legislation on interception of communications and surveillance also lasted for a few days. But for this Competition Bill, which is the first of its kind in Hong Kong, all Members of the pro-establishment camp seem to be muted. Members sitting on the other side of the Chamber are just the same. They all have become silent, watching our show to see how long the three of us can drag on. In fact, we are not posing delay. Our purpose is to identify the problems because "the devil is in the details". Why do they put on a contemptuous look? They may

go home and sleep if they do not want to hear us speak. I will request a headcount as long as a quorum is lacking. Let me tell you, this is not negotiable. You just sit tight.

MR ALBERT CHAN (in Cantonese): Deputy Chairman, please do a headcount.

DEPUTY 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)

DEPUTY CHAIRMAN (in Cantonese): Mr WONG Yuk-man, please continue.

MR WONG YUK-MAN (in Cantonese): Although we agree with the Government's amendment, we consider that the definition of bid-rigging in clause 2 is ambiguous. For example, what is the meaning of bid-rigging? It means (a) an agreement — there are two kinds of agreement — (i) that is made between or among two 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.

Deputy Chairman, this sentence is really baffling. It has specified bid-rigging, the definition of which is set out. But in this definition, one of the sentences does not have a subject. The phrase "在2個或多於2個的業務實體之間訂立" (between or among two or more of those undertakings) is an important element. As for "在2個或多於2個的業務實體", let us come back to the subject, that is the stalls, in the court case in 2004. The agreement was made between the owners of more than two stalls. What is the agreement they reached? It is not specified here.

Having talked about agreement, the two phrases "符合以下說明的協議" and "而根據該協議" imply that "該協議" is precisely "符合以下說明的協議". Such an approach is modelled on the English version but no one will write

Chinese this way. As for the phrase "一個或多於一個該等業務實體同意", does the term "該等" refer to "2個或多於2個" mentioned above or what? If it refers to the "2個或多於2個" mentioned above …… assuming that there are three or four undertakings, if "該等" refers to four undertakings, then who undertakes not to submit a bid or tender in response to a call or request for bids or tenders? What is the difference between "邀請" (call) and "要求" (request)? The Secretary is not present. Those who drafted the law are not present either. I really want to ask them this question. They should explain it to me because it is really very puzzling.

Certainly, concerning provisions in law, I always say that the English version is most precise and the Chinese translated version is neither fish nor fowl. I would like to ask how many of you here understand the meaning of the text. Please explain it to me because I do not understand it. No matter how I read it, I do not understand it, especially the last sentence.

DEPUTY CHAIRMAN (in Cantonese): Mr WONG, your speaking time is up. Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Deputy Chairman, the definition of bid-rigging in the amendment to clause 2 is apparently copied from the Competition Act in Canada. According to the definition in the Bill, agreement includes any agreement, arrangement, understanding, promise or undertaking, whether express or implied, written or oral. As Mr WONG Yuk-man said in the example he cited, the Government has unilaterally granted the right of operation of the Ocean Terminal at Tsim Sha Tsui to the Wharf Holdings Limited in the form of a private agreement. It involves not only the use of the building, but also the operation franchise of the berths. According to the Bill, this has in fact constituted bid-rigging. But the Government is not subject to regulation of the law because of the exemption. This is a case of *quod licet Iovi, non licet bovi,* which is absolutely unacceptable. Examples of transfer of benefits from the Government to the private sector are numerous.

Therefore, the People Power has repeatedly criticized the inadequacies of the Bill as a whole in the Second Reading debate and condemned the

Government's violent behaviour and transfer of benefits, thus affecting the interests of consumers.

Deputy Chairman, please do a headcount.

DEPUTY 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)

DEPUTY CHAIRMAN (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): Deputy Chairman, the definition of bid-rigging is basically copied from the Competition Act in Canada. Deputy Chairman, I feel concerned about the adoption of this definition in Hong Kong. As we all know, many enterprises in Hong Kong, such as large consortia, have affiliated subsidiaries. Companies within the same group are interrelated …… There are certainly ties among companies within the same group. For example, when a shopping centre owned by a consortium is let to its subsidiary, it will create a relationship between *de facto* ownership and control.

However, it is well-known that many companies in Hong Kong are not directly related with each other. For instance, some management companies are subsidiaries of a consortium. However, the management right of the management company is vested by the owners' corporation through an open tender. Such management companies, which are affiliated with some large consortia, may take advantage of their management right, which is derived on the basis of their operation, to assign contracts involving direct interests to telecommunications companies, environmental protecting companies, cleaning companies or security companies which are affiliated with the large consortia without going through an open tender process. These management companies may sign agreements with such companies.

Under the Bill, these situations should constitute the so-called bid-rigging. According to the stipulation of the relevant clauses, these are monopolization or serious anti-competitive activities under clause 21 of the Bill. However, due to the relationship between the consortia and their subsidiaries, the relevant clause may not be applicable in this situation. Therefore, I hope …… Deputy Chairman, the Secretary is not present …… a Secretary is seldom absent at the Bill Committee stage. The Secretary has been absent for a long time. When "Yuk-man" spoke just now, he was not present. Maybe he has gone out for dinner, Deputy Chairman, but the three of us have no meal breaks.

I do not understand why the Chairman has not arranged for meal breaks today. A one-hour meal break was arranged during the scrutiny of the Legislative Council (Amendment) Bill 2012 two weeks ago. But there are no meal breaks even though the meeting will last for several hours from 2.30 pm until 10 pm tonight.

Deputy Chairman, a headcount please.

DEPUTY 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)

DEPUTY CHAIRMAN (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): Deputy Chairman, concerning bid-rigging, I have already expressed my views clearly and pointed out the serious inadequacies of the relevant provisions drafted by the Government. Nevertheless, this amendment is still better than none. There is no relevant clause in the original Bill. The amendment proposed by the Government has enhanced the regulation on bid-rigging, thus slightly strengthening or improving the effectiveness of the Bill.

(THE CHAIRMAN resumed the Chair)

Besides, in amending clause 21 of the Bill, the Government has added some matters that may be taken into consideration in determining an undertaking "that has a substantial degree of market power", including the market share of the undertaking. This direction of amendment is certainly worthy of encouragement and support. However, as to the level of market share and the meaning of market share, there is no specific definition. Certainly, we understand that the so-called big market share should refers to the big market share of the products of the enterprise concerned. If the enterprise manipulates the market by means of its market share, this will constitute serious anti-competitive conduct.

However, given that it has not explicitly set out the level of market share in the Bill such as 40% or 60%, large consortia can make use of the loopholes in some special circumstances. Given the vague definition in the Bill, although the market share of a large consortium in some sector may not be big, it may make use of its edge of low market share — it is influential albeit it is a low percentage in market share — so that the plutocrats can take the opportunity to hurt others with their capital. They will sue other companies, bringing unnecessary political and legal risks to SMEs or some small-scale operators. I think this is the inadequacy of the amendment.

Certainly, the Government cannot propose any amendment at this stage. But I would like to point out that the Government should review and propose amendments to the legislation in respect of these potential loopholes and problems in future when it has the opportunity to do so. After the commencement of the Ordinance, the Government will usually have time to make further amendments and review.

Chairman, another point that I wish to highlight relates to the amendment to clause 139(2) of the Bill. In this amendment, the Government has changed the word "may" into "is to". The original clause reads, "If the office of President or Deputy President has become vacant, the Chief Executive, acting in accordance with the recommendation of the Judicial Officers Recommendation Commission, may appoint one of the members of the Tribunal to be the President or Deputy President". After changing the word "may" to "is to", the clause after amendment reads, "If the office of President or Deputy President has become

vacant, the Chief Executive, acting in accordance with the recommendation of the Judicial Officers Recommendation Commission, is to appoint one of the members of the Tribunal to be the President or Deputy President".

Chairman, the People Power supports this amendment, which can ensure that the vacancy will be filled in accordance with the recommendation of the Judicial Officers Recommendation Commission (JORC). This meaning is relatively stable. In the original version, the word "可" is used. We know that this word is used corresponding to the English word "may". As a result, it means that the Chief Executive may make appointment of his own accord entirely, paying no heed to the JORC's recommendation. I really do not understand why the Government had drafted the clause in such a careless manner. The word "可" (or "may" in English) is used instead of words with meaning which is more stable or precise. In other words, "is to" will ensure that the Chief Executive will make appointment in accordance with the recommendation of the JORC. We therefore support the amendment to clause 139(2). Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(Mr LEUNG Kwok-hung stood up)

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, please hold on. Please sit down.

Before I continue to call upon Members to speak, I would like to say a few words. As Members all know, we have set up the Bills Committee on Competition Bill to scrutinize the Bill for more than a year, during which a number of meetings were held to discuss each and every clause. We can see that the Government has proposed a number of amendments after listening to the views of the Bills Committee. Precisely because of this, we are holding a joint debate on this group of clauses to which amendments have been proposed by the Government. This is our usual practice and these amendments are supported by the Bills Committee.

Certainly, at the Committee stage, Members may hold different views even though the Bills Committee has indicated that certain amendments are endorsed by the majority of the members. Therefore, we should express our own views in this stage. However, we should not, in the Committee stage debate, spend a lot of time discussing in detail problems which have been discussed at the meetings of the Bills Committee or even, as Mr Albert CHAN mentioned earlier, changes to wordings which are reflected in the amendments after being suggested at the meetings of the Bills Committee and accepted by the Government. Therefore, I hope Members, especially those who have spoken many times, will pay attention to this point when they speak again.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, the function of the Committee of the Whole Council is that if all Members are present, they can listen to others' views before deciding how to vote. Otherwise, there is no need to have a Committee stage and Chairman, you can preside over the meeting as President of the Legislative Council throughout the process. Certainly, I dare not challenge you because you are the Chairman ……

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, you are speaking for the fourth time, so please avoid repetitions and digression by all means.

MR LEUNG KWOK-HUNG (in Cantonese): Yes, I just hope that all Members will listen. Some Members have not attended the meetings, but I am a member of the Bills Committee. As you know, under the system of "one person, one vote", I have only one vote. Therefore, I am the minority here. In the Bills Committee, I could not be the majority. So, I hope to become the majority at the Committee stage and vote against bad amendments proposed by members of the Bills Committee or the Government. So, I hope you can appreciate this.

I would like to focus on clause 139. In fact, as for clause 139, why do we use …… Mr Albert CHAN said that we should not use the word "may", which should be replaced by "shall". I think the word "may" will probably play a role. Why is the word "may" used? Because room could be given to the Chief Executive …… we have to understand that ……

CHAIRMAN (in Cantonese): Mr LEUNG, you said just now that you had raised some views in the Bills Committee, but because you were the minority in the Bills Committee, you wanted to raise the views again so that the Committee of the Whole Council would know. In that case, had you raised your views in the Bills Committee which did not accept your views because you were the minority?

MR LEUNG KWOK-HUNG (in Cantonese): I had raised my points, but most of the members …… Chairman, you must understand this. I know that you have attended a lot of meetings. Most of the attendees do not respect each other's opinions, and they will not be required to vote after listening. Am I correct? They are not required to vote ……

CHAIRMAN (in Cantonese): I just wish to remind Members not to repeat points already discussed in the Bills Committee.

MR LEUNG KWOK-HUNG (in Cantonese): Yes. Back then, the Government said that the word "shall" should be used. I was fooled. I think I made a mistake in the past and what I am doing is correcting it. After listening to Mr Albert CHAN's speech, I have been thinking about the meaning of the word "may". It implies that power of discretion will be given to the Chief Executive. Why? Because the President or Deputy President is actually appointed by the executive authorities. The Tribunal is established by the executive authorities on need basis, only that we have given it the status of court.

On this point, the Tribunal will not adopt a strict separation of powers like us. In other words, under the Basic Law, after vacancies or positions have been filled by officials, everything will be clear and the hierarchy will also be well-defined and nothing can be changed unless the game is over and an election is held again. On this issue, I think the authorities must have certain reasons. As confusion is not allowed and the President of the Tribunal is not a judge as in the Judiciary, the authorities hope that the power can be vested in the Chief Executive. This is their original intention.

As the saying goes, "one should seek justice against the appropriate perpetrators and collect debts from the right debtors". I think there is a merit in

the drafting of that clause. If the Chief Executive insists on taking up this duty, a responsibility which cannot be borne by him — although I do not know what it is, he has to take it up — there is a difference between the phrases "may do something" and "may not do something". He may exercise the power according to circumstances as he thinks fit. I can naturally monitor the Chief Executive. However, if the term "一定" (definitely) is used in the clause, there will be no choice because he is required to do what is laid down in the law. So, in my opinion, the authorities are not entirely unfounded, and I urge all Honourable colleagues to consider it.

Chairman, let us look at clause 138 which is about the President, and I quote, "(1) The President and Deputy President may, at any time, resign from their office by giving written notice of resignation to the Chief Executive. (2) If the President ……" Chairman, can you see it? …… "(2) If the President or Deputy President resigns from office under section ……"

CHAIRMAN (in Cantonese): Mr LEUNG, which clause are you referring?

MR LEUNG KWOK-HUNG (in Putonghua): Clause 138.

CHAIRMAN (in Cantonese): Clause 138 has already been passed and stands part of the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): No, because the relevant stipulation has extended from clause 138 to clause 139, both of them are interrelated. I know that I am not talking about clause 138, but clause 139. Chairman, please let me continue first. I see your point. You said that clause 138 is passed without amendment and an amendment is being made to clause 139. But clauses 138 and 139 are interrelated, or else we should jump to clause 147 or clause 258. But the two clauses are consequential and interrelated, am I right?

Chairman, please do not interrupt me so that I can explain it to you. Under clause 138(2), "If the President or Deputy President resigns from office under this section, he or she continues to be a member of the Tribunal", meaning

that the President should tender his/her resignation to the Chief Executive and is not accountable to the Court. Chairman, do you remember that I had applied for a judicial review against Donald TSANG? After a major setback, Donald TSANG rushed to enact the law in haste. As a result, we had to hold meetings in August in order to enact the legislation on interception of communications and surveillance. A Judge was appointed as a matter of administration to take up some special duties. But that was not a court. So, to a certain extent, these judges are tantamount to be in a situation where "Though trapped in the Cao camp, their hearts are still in the Han camp". Though they are judicial officers, yet ……

CHAIRMAN (in Cantonese): Mr LEUNG, I cannot see any relationship between your remarks right now and your speech on the amendment to clause 139 earlier.

MR LEUNG KWOK-HUNG (in Cantonese): What is the reason? The Chief Executive should have the power to consider whether the power should be exercised to make the appointment, do you understand? As he has the power, that is the purpose, do you understand?

CHAIRMAN (in Cantonese): Please continue.

MR LEUNG KWOK-HUNG (in Cantonese): Please do not laugh, or I will be in trouble. I am serious. So, the problem is, if we read these two clauses together, we will see that the President or Deputy President will be able to take up other jobs through the "emergency exit" after resignation, okay? They can return to their previous professions. As for the others, they cannot take up any other jobs after resignation just like the Secretary, who has to depart after completing his term of office ……

CHAIRMAN (in Cantonese): Mr LEUNG, your speech is irrelevant to the amendment that we are dealing with. Please speak on the amendments in this part.

MR LEUNG KWOK-HUNG (in Cantonese): Therefore, clause 139 has given a power to the Chief Executive so that he "may" or "may not" do something, meaning that he may not necessarily make the appointment. Therefore, in my view, the Government may be forced to accept this amendment. In fact, it wants to retain the power.

In my opinion, the Government wants to retain the right. Sometimes it is good, but sometimes it is bad, depending on the issue at stake. I hope Honourable colleagues will consider this. Sometimes, we may not need to support the Government's amendment. Chairman, as you may also understand, views are constantly changing regardless of whether it is in a Bills Committee or select committee. Our views are changing in response to the change in the political situation outside; in response to the attendees of a meeting; in response to who bang on the table ……

CHAIRMAN (in Cantonese): You have strayed from the question.

MR LEUNG KWOK-HUNG (in Cantonese): So, change is not made on the basis of common sense. It is a political decision instead. Certainly, I am a political figure. But today I wish to say that we sometimes have to do something out of common sense. Chairman, you will not understand what I mean, but I do not want to bother you. If you do not understand it, I will talk about this issue next time so that another colleague can speak. If you do not understand it, I can do nothing because you have not participated in the Bills Committee. This is the problem with the Committee of the Whole Council.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR WONG YUK-MAN (in Cantonese): Just now, the Chairman intended to cut the filibuster but it does not matter because at present, we are not filibustering, rather, we are at the Committee stage voicing views on the Government's proposed amendments — this is a process of debate — before voting takes place.

The Rules of Procedure has clear stipulations and the parliamentary spirit is also very clear. The Chairman must not lose his patience just because he finds three people speaking in turn and some of them have strayed slightly from the question and feel like cutting the filibuster again. He has probably become hooked to cutting the filibuster as a result of having done so before. Full stop.

CHAIRMAN (in Cantonese): Mr WONG, please sit down. While you were speaking earlier on, I was not in the Chamber but I heard you say that only very few Members had spoken.

MR WONG YUK-MAN (in Cantonese): The fact is that only very few Members in the Chamber have spoken.

CHAIRMAN (in Cantonese): I wish to explain to Members once again that at the Committee stage, we have divided the clauses to which amendments are proposed into several groups for joint debates. The group being dealt with by us now consists of all the amendments proposed by the Administration and they have been discussed in the Bills Committee.

Earlier on, the Secretary said at the beginning of his speech that these amendments had got the support of members of the Bills Committee and this is precisely the reason for the smaller number of Members who have spoken in the discussion on this group of amendments. However, it is strange that those Members who did not join the Bills Committee find that they have a lot of views to express. Of course, Members have the right to voice their views. I only wish to remind Members that the amendments being examined now have been raised for discussion in the Bills Committee and some are even proposed by the Government in response to the requests of the Bills Committee.

Mr WONG, please continue.

MR WONG YUK-MAN (in Cantonese): Chairman, I am also a member of the Bills Committee but I did not take part in the scrutiny of some clauses because I could not attend each and every meeting and not all members of the Bills

Committee could attend each and every meeting. At that time, I did not vote for some amendments and I also hold different views on some amendments. I must point out here that I agree in principle with some clauses, for example, the one relating to bid-rigging, which I support in principle, as I have explained, and there are also some areas in which I think there are problems and there is room for improvement. For example, there is no provision on criminal liability. I have already raised this issue and I have not strayed from the question, have I?

In making the comments just now, the Chairman means that what is being discussed at the Committee stage are all government amendments and most of them have been discussed and endorsed by the Bills Committee, so they do not have any problem and we should not repeat the points again. I have kept a record of all the views voiced by me in the Bills Committee and the main points of my speeches. Having spoken thus far, I have never raised for discussion any clause which I have talked about before and I have all along been discussing bid-rigging. Of course, my speeches may be a bit long and I have also cited some precedents — throughout, I have only cited two precedents — and the Chairman has already tried to stop me. However, it does not matter and this is not a problem. I will observe the Rules of Procedure by all means. Matters that I cannot raise in this session can be raised when dealing with the amendments of the next session. There are still many chances for me to continue to talk and we have also prepared some material for our speeches.

Concerning the amendments relating to bid-rigging being discussed by us, I found a problem in Part 2. Just now, I talked about Part 1. I think that if criminal liability is introduced, in the future, other laws can be amended to tie in with this and this is certainly most preferable. If responsibility for this kind of bid-rigging can be pursued through civil or criminal channels, the Government does not always have to charge people with fraud or ask the ICAC to carry out investigations into people who carry out rigging ……

CHAIRMAN (in Cantonese): Mr WONG, please make no repetition.

MR WONG YUK-MAN (in Cantonese): …… I know. Concerning Part 1 …… just now, I only talked about my concerns about bid-rigging in relation to Part 1

briefly. The wording of the provisions in Part 2, as pointed out by me just now, is incomprehensible. Since the Chairman is so astute, please explain it to me. "Bid-rigging" means (a) an agreement —", it is then followed by (i) and (ii). I will read it out to you, OK?

CHAIRMAN (in Cantonese): You have already read it out. I know the details very well.

MR WONG YUK-MAN (in Cantonese): Reading it out is allowed, right? …… "that is made between or among two or more undertakings whereby ……" — this probably refers to "(a) an agreement —" mentioned above — "…… 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.". What is the difference between "call" and "request"? Both means reminding undertakings not to put up any tender or bid, so why is it necessary to use both "call" and "request"? Why can such drafting not be improved?

Although I am concerned about the incomprehensibility of Part 2, one may still barely be able to make sense of what I read out just now, but what follows is even more incomprehensible. After the semi-colon, "or agrees or undertakes to withdraw a bid or tender submitted in response to such a call or request.". Our astute Chairman, what does this mean? The language is so cumbersome, but should amendments not be clear and concise rather than being so cumbersome? Why can they not be further improved?

Part (ii) is also really ridiculous. "(ii) that" — referring to the "(a) an agreement —" mentioned above — "by a party to the agreement or by" …… here it reads "…… 在該協議的一方或由該協議的一方或多於一方所控制的實體出價或落標 ……" (…… 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) but before the Chinese term "實體", the two characters "業務" cannot be found. What did those people who took part in the scrutiny by the Bills Committee do? Did anyone point this out? Chairman, I did not take part in the scrutiny of this clause, or I surely would have pointed this out and proposed an amendment. Next, on "(撤回出價或落標)" (to withdraw a bid or

tender) but before this, the words "a bid or tender (出價或落標)" have already appeared, so is it still necessary to put the Chinese words "(或撤回出價或落標)" in brackets? Do Members not think that these amendments are rubbish? The meaning is OK because bid-rigging is serious anti-competitive conduct, so it is right to include bid-rigging in section 2(1). However, if I cannot understand the explanation on what "bid-rigging" is, how could people who are to be regulated by the law understand it? If even you and I do not understand it, how can they understand it? How come the drafting is done this way? What we are discussing now is really incomprehensible.

Next, the brackets are followed by "之時或之前，沒有人向邀請或要求作出競投或投標的人透露有該協議" (that is not made known to the person calling for or requesting bids or tenders at or before the time). "協議" refers to the above-mentioned agreement, in that case, in "not made known to the person calling for", who is the one making the call or request? Why is it necessary to use the preposition "向(to)"?

I am concerned about this issue of bid-rigging because bid-rigging is serious ant-competitive conduct and the Government was also amenable to good advice by including bid-rigging in the Bill — as the Chairman said — and all parties agreed to this, and so did I. However, to spell out and explain the meaning of bid-rigging in writing in this way …… just now, I only quoted the text briefly and I am already an eloquent and fluent speaker with a comparatively stronger power of speech and expression, but after I had read out the passage, I did not know what I was talking about either, so may I ask Members how people to be regulated by the law could possibly understand it?

(Mr Albert CHAN stood up)

CHAIRMAN (in Cantonese): Mr Albert CHAN, what is your point?

MR ALBERT CHAN (in Cantonese): Since "Yuk-man" said that even he did not know what the Bill was talking about, I request a headcount.

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): Mr WONG Yuk-man, please continue.

MR WONG YUK-MAN (in Cantonese): In the provisions of this amendment, part (a) of the definition of bid-rigging consists of two items, and I have already quoted from them but the Secretary is not present. Now, the caption displayed is "Competition Bill/Committee Stage/Amendments to be moved by the Secretary for Commerce and Economic Development". May I ask the Chairman if the Secretary should give me explanations on the queries raised by me just now in his speech later on?

CHAIRMAN (in Cantonese): Mr WONG, you know that the facilities of the Chamber are very advanced. Even though officials or Members are outside the Chamber, they can still hear you speak.

MR WONG YUK-MAN (in Cantonese): In that case, may I ask the Chairman if the Secretary will respond? When will he respond?

CHAIRMAN (in Cantonese): It is up to the Secretary to decide when to speak and to which Members' comments he wants to respond. There is no requirement on when the Secretary has to give a response.

MR WONG YUK-MAN (in Cantonese): Ok, I see. If he does not respond, the public will see that he does not know how to respond …… and he will have trouble. Is that what you mean?

CHAIRMAN (in Cantonese): Mr WONG, please focus your speech on the details of the clauses.

MR WONG YUK-MAN (in Cantonese): So, I have to continue to speak. I have already talked about part (a) of the definition of bid-rigging, which I consider incomprehensible. I have exercised all my power of comprehension but still, I do not understand what is considered bid-rigging in the amendment.

Part (b) of the definition comes next. I do not understand which agreement the phrase "by an agreement —" refers to. Is it the agreement mentioned in part (a)? This should not be the case because this is part (b). Part (a) is further divided into (i) and (ii) under "an agreement —" to explain what the agreement is and that making such an agreement is considered bid-rigging. We can only understand this in such a way.

As regards part (b), it is specified that "a submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by an agreement —", and some explanations follow. What is the difference between this agreement and the agreement mentioned in part (a)? Of course, the Secretary has no idea because this is not drafted by him. It was drafted by the Law Draftsman and subsequently, the Deputy Secretary helped him draft the amendments, only that the amendments are proposed in the Secretary's name. However, in a reversal of roles, when we were discussing them, he said that we had strayed from the question and that I did not have a clear idea, believing that all the things said by us were wrong. Even though he said such things, no one took issue with them, so you see how unfair this is. I now continue with my speech.

Part (b) is written in this way: "by an agreement — (i) that is made between or among two or more undertakings; and", after that, "and" as well as "(ii)" are added …… some people are already yawning, so we can see …… "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.". What do I find confusing? The meaning of bid-rigging is explained by two parts, one of them being part (a), which I can still understand albeit with great difficulty, that is, colluding to fix prices and making secret agreements among people, then having someone offer a bid, so as to gain

benefits. This is my understanding after some struggle. However, no matter how I read part (b), I do not know what it is saying. What actually is the definition of bid-rigging? Is this not going too far to ask me to pass this amendment regardless? I am not going to talk about this part anymore. Let me say that I am done talking about it, so that the Chairman would not say that I am dawdling.

Now, I wish to talk about the amendment to clause 27(2). Among the amendments proposed by the Government, there is one that amends clause 27 and I have chosen clause 27 for discussion. The original 27(2) reads, "凡有關決定在某些條件及限制的規限下具有效力" (subject to which the decision is to have effect) — again, it talks about both "conditions" and "limitations" — "…… subsection (1) applies to an undertaking only in so far as that undertaking complies with every condition and limitation ……". Now, this amendment has replaced "凡"(faan4) (meaning all, any, every) with "如"(jyu4) (meaning if), so that it has become "如有關決定在某些條件及限制的規限下具有效力……" (…… every condition and limitation subject to which the decision is to have effect) …… Secretary, do you have that clause with you? Do you? Get it and take a look. In this way, you will be more sober, otherwise, you really would not know what I am talking about. "The immunity provided by subsection (1) applies to an undertaking only in so far as that undertaking complies with every condition and limitation subject to which the decision is to have effect.". Chairman, not only would you be all at sea, I am all at sea, too.

I wish to talk about why "凡" has to be changed to "如" first. Members, what is meant by "凡"? The first meaning is ordinary, mediocre, nothing out of the ordinary, so there is the phrase "凡夫俗子" (meaning common people, ordinary folk, gigmanity). Another meaning is this mortal life, that is, "凡人" (meaning man, people, mankind, mortals) and "凡間" (earthly existence and the human world). This is also the meaning of "凡". Another meaning is one that many people know. "凡" means "所有的 (all) *(In Putonghua)*" — like "凡是立法會議員皆垃圾" (all Legislative Council Members are rubbish), that is, all Members are, and that is why it is called "垃圾會" (rubbish council), so "凡" means all. The fourth meaning is "in total", as in "《黃毓民全集》全書凡28卷" (The Collected Works of WONG Yuk-man consists of 28 volumes in all) and this "凡" means in all, that is, there are as many as 28 volumes in The Collected Works of WONG Yuk-man. Another meaning of "凡" is "general" and "summary". Members will find that in some old books, the term "凡例"

(introductory notes, explanatory notes) can be found, can it not? Another meaning is little known to many people. It is a numeric musical notation in musical scores. "凡" is the musical note 4 and is a musical notation in ancient Chinese musical scores.

What is the meaning of the word "凡" in the original version, Secretary? I have already spelt out six meanings of the character "凡", so does this "凡" mean ordinary, earthly, all, in total, general or is it a musical note? It would talk a long time to explain this clearly.

All right, let us talk about the character "如" now. The amendment wants to change the character "凡" into "如" and change "凡有關決定 ……" to "如有關決定 ……" ("subject to which the decision is to" ……) in the Chinese version. In that case, what is the meaning of "如"? I am now playing with words because there are problems in the choice of words. I will explain where the problem lies to the Secretary in my 15 minutes of speaking time in the second session. What are the meanings of "如"? It means "依照"(in accordance with), "順從"(in compliance with). For example, if I issue a letter and then add an attachment, which may be an invitation card, to it, I would write in the latter part of the letter "邀請卡如附件" (invitation card attached), so this "如" has the meaning of referring to an attachment to a letter, so I wrote "如附件" (attached). In addition, "如法炮製" (copy, duplicate, make it in the same way) has the meaning of following, complying with or according to *(The buzzer sounded)* ……

DR MARGARET NG (in Cantonese): Chairman, I would like to give a brief speech in response to the speech delivered by Mr LEUNG Kwok-hung just now. The amendment to clause 139, which originally reads "If the office of President or Deputy President has become vacant, the Chief Executive, acting in accordance with the recommendation of the Judicial Officers Recommendation Commission, may appoint one of the members of the Tribunal ……", seeks to amend "may" as "is to".

In fact, Chairman, the main point I wish to make is that Mr LEUNG Kwok-hung misunderstood the functions of the President in his speech. First of all, the role of the judges in the Tribunal is different from that of the panel judges under the Interception of Communications and Surveillance Ordinance, who are

tasked with undertaking administrative work totally unrelated to their judicial functions. This explains why we strongly opposed such an arrangement at that time. On the contrary, all the judges in the Tribunal are Judges of the Court of First Instance. Being Judges though, they have two types of duties, namely hearing cases and examining case-related administrative work. Chairman, concerning the duties of the President, clause 135(3) provides that the President may give directions as to the arrangement of the business of the Tribunal. Unlike other judges, the President must act according to the "arrangement of the business". In view of this specific function, he must be appointed by the Chief Executive.

Chairman, we attach great importance to judicial independence in this jurisdiction. Therefore, even though the Chief Executive is to appoint a Judge of the Court of First Instance as the President to exercise some administrative powers, the appointment by the Chief Executive is expected to be made in accordance with the recommendation of the JORC rather than according to his free choice. I wonder if "may" was initially used in clause 139 because of consideration of the fact that the Chief Executive might not be required to make the appointment. For instance, the remaining term is so short that no appointment is required. However, if an appointment is to be made by the Chief Executive, he must do so in accordance with the recommendation of the JORC, rather than according to his own preference of following the recommendation or otherwise.

In my opinion, Chairman, this amendment is very clear and readily comprehensible, but the wording in the original clause might be wrong. However, I believe there is no need for any member who had participated in the discussions held by the Bills Committee on the Competition Bill to spend a lot of time discussing this issue at the Committee stage. This should be very clear.

Chairman, Members might have a very clear idea about my views on the so-called "filibustering" because I have not only expressed my opinion in this Council, but also published articles on it in newspapers. I particularly wish to safeguard many procedures in this Council, especially the procedure of law-lawing.

Just now, Mr LEUNG Kwok-hung said that he should be allowed to discuss in detail at the Committee stage all the issues he has not discussed

because of his absence from the Bills Committee or all of its meetings. Chairman, I think it is not conducive to the legislative procedure of this Council to do so. Hence, I cannot approve of this. Why should Bills Committees be set up? Certainly, Bills Committees are merely work meetings. Even if a Member votes in favour or against relevant amendments or original clauses in a Bills Committee, he can still vote differently or abstain from voting when it comes to the Committee stage. Other Members who have not participated in Bills Committee discussions may also vote freely. Members should enjoy the right to do so. However, if all the discussions held by Bills Committees are regarded as futile and a waste of effort, then our legislative procedure will be unable to achieve the best result.

Chairman, I myself did not show up at the Bills Committee on every occasion because there were many issues not considered by me as problematic but considered so by other Members. For instance, I have no doubts at all about whether SMEs are subject to unnecessary threats or whether or not the clauses concerning SMEs are clear. However, if other Members have doubts, they have every right to spend a lot of time in the Bills Committee to put questions to the Government. Nevertheless, when it comes to making amendments, our approach is for the Bills Committee to issue a report in which the relevant provisions are set out. We will also read the report and study the content of the amendments. If we disagree, we will speak out.

Hence, Chairman, my speech is merely intended to respond briefly to the view expressed by Mr LEUNG Kwok-hung, that he can start all over again in the Committee stage. In my opinion, it is not conducive to the legislative procedure of this Council to do so. I hope Mr LEUNG can consider my advice. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(Mr Albert CHAN stood up)

CHAIRMAN (in Cantonese): Mr Albert CHAN, do you wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, I request a headcount.

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summon bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, I would like to comment on the Government's proposed amendment to clause 35 which adds subclause (6). The entire amendment should read, "delete subclause (5) and substitute subclauses (5) (6), (7) and (8)".

CHAIRMAN (in Cantonese): Mr CHAN, I suggest you wait until the next group of amendments before discussing the amendment to clause 35, which will be debated later on.

MR ALBERT CHAN (in Cantonese): Sorry, Chairman, I have got the wrong paper. Chairman is very smart. I have several papers on hand.

If so, I would like to make a little comment on the deletion of Division 3 from Part 7 and clause 114. Later, I will express my views on clause 35 as mentioned just now.

Chairman, insofar as the deletion of Division 3 from Part 7 is concerned, it was originally provided that individuals, including consumers, who have suffered loss as a result of a contravention of the competition rules may make a request to the Commission for adjudication. With the new amendment, however, individuals who have suffered loss as a result of a contravention of the competition rules cannot — I emphasize, cannot — make a request to the Commission for adjudication.

Certainly, I understand that in the debate earlier, Members, especially those from the Economic Synergy, repeatedly pointed out that SMEs, especially small-capital or financially less capable SMEs, are very likely to face the impact brought about by such actions.

I do appreciate and share the concerns raised by SMEs. Insofar as the relevant arrangement is concerned, however, the Consumer Council (CC) has also advanced the view that, after the exclusion of stand-alone private actions, the future Commission will become the only channel through which consumers can file complaints against undertakings for anti-competitive conduct. Should the Commission become the only channel — Of course, if the Government can provide adequate resources, manpower and funds to the Commission or CC to institute actions against these undertakings, and provided that the funds are adequate, competition is very likely to be assured and the relevant spirit or idea of the Ordinance can be realized.

As I indicated during the Second Reading debate, however, I have such concerns or share the concerns of the CC about whether the Commission having adequate resources to carry out anti-competitive monitoring, enforce the relevant legislation, and institute stand-alone actions. Hence, while the clause itself might be capable of assuring that the concerns of SMEs are addressed, the arrangement regarding the overall relations covered by the legislation is actually unique. The exclusion of certain actions through an amendment has prevented some actions from being instituted in this respect.

On the other hand, Chairman, several Members mentioned …… I have to find the original wording of the relevant clause. It is proposed to delete everything after "if" in clause 106 and substitute the new clause 106 providing that "no proceedings be brought independent of this Ordinance". I understand the relevant background, particularly the legal liability and the pressure arising from the relevant fees in connection with the actions as well as the relevant financial commitments. Nevertheless, Chairman, I would like to point out the scope provided for in the clauses, such as clauses 106 and 108 — the amendment to clause 108 reads, "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.'."

Chairman, since I had attended a number of relevant actions dealt with in many tribunals, I have some concerns, including my personal observations of the attitude of certain officials in the tribunals in adjudicating cases and concerns about the quality of the staff of the tribunals as reflected by senior counsels to me. Certainly, with such a system and these judges appointed to the Tribunal, we should have faith in the quality of the relevant officials in this system meeting the basic requirement.

Nevertheless, from the hearings held by the tribunals and attended by me as well as my own observations — not my own trial, I find that the attitude of and the professional standard of the relevant judgments made by some officials and judges in the tribunals are a cause for concern. Should there be problems with their standard, but it is ruled that no proceedings can be brought independent of this Ordinance, the possibility or channel of seeking redress for the outcome of unjust trials will, to a certain extent, be affected as a result of the passage of and amendment to this clause. Certainly, the clause as amended is better than the original one, but the problem reflected by the clause itself is still a cause for concern. Hence, I very much hope that the Government can further review this Ordinance, if passed, at a suitable time.

Moreover, I wish to emphasize again that in respect of the Tribunal, the appointment of judges, particularly actions involving the relevant provisions, assurance of the quality of the officials is vitally important.

Chairman, a headcount please. Thank you.

CHAIRMAN (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(After the summon bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): Chairman, I would like to voice objection to the amendment to clause 142(2). I also hope that this amendment can be singled out later for separate voting because we want to indicate support for some amendments we approve of.

The amendment to clause 142(2) seeks mainly to delete certain wordings from the clause. The original text of the clause reads as follows: "receive and consider any evidence, whether by way of oral evidence, written statements, documents or otherwise, and whether or not it would otherwise be admissible in civil or criminal proceedings in a court of law". According to the proposed amendment, the expression "in civil or criminal proceedings" should be deleted from the clause. As a result, the clause will read "…… and whether or not it would otherwise be admissible in a court of law".

Chairman, with respect to this proposed deletion and amendment, I understand that the original text stating that civil or criminal proceedings are included is cumbersome and nonsensical, since basically all laws are included. Hence, there is actually no need to state clearly whether the proceedings are civil or criminal. However, not only "civil or criminal" will be deleted, even "in …… proceedings" will be deleted, too. In terms of meaning — as I am no expert, I hope Dr Margaret NG can give us some advice — the legal proceedings conducted in a court of law should follow a very clear and specific established procedure. Moreover, they should carry special significance in law, too. If for the sake of having "civil or criminal" deleted, the wordings "in …… proceedings" have to be deleted as well, then the clause will read "whether or not it would otherwise be admissible in a court of law". The entire clause will then become quite weird.

Insofar as provisions in law are concerned, I do not know if the relevant provisions in legal proceedings will be affected as a result of the deletion of these wordings. Neither do I know whether or not the Government has made reference to other provisions in law during its deliberation or whether there are precedents to follow or support in law in other provisions. Nevertheless, judging solely from the wordings, the relevant deletion is a substantial amendment to the original text insofar as justifications and meaning are concerned.

Chairman, although I am a layman, I can already observe this shortcoming by merely looking at this clause — I do not know if this is a shortcoming. Nevertheless, I would rather the clause being cumbersome and redundant than seeing its original meaning abolished or deleted altogether, because this will lead to shortcomings or unnecessary legal disputes. This is absolutely not …… should these problems be identified during the scrutiny of the Bill, they should be raised for discussion. Nevertheless, I am just a layman. I hope the experts can put forward their views and share them with us.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(Mr LEUNG Kwok-hung stood up)

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, you are speaking for the fifth time.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, thanks to Dr Margaret NG for her enlightenment. I will listen to someone's advice if it is right. Thank you. Now I am going to throw a sprat to catch a herring again. If Dr Margaret NG thinks that I am wrong, please enlighten me.

My remarks are just commonplace, and I have expressed my opinions in the Committee stage, too. The issue of stand-alone private actions is also a focal point of argument surrounding the enactment of this law. The Government's proposal of deleting Division 3 altogether means that all stand-alone actions will disappear. What are stand-alone actions? They are actions brought not through the Commission set up by the Government in accordance with the law in the course of legislation.

I appreciate the concern of many colleagues about the possible concern of SME operators that, with stand-alone actions in place, such actions may be

brought by the rich without being examined by the Commission, and hence, the rich people will have even more abundant resources to harass less resourceful SMEs. This I understand. But the point is, if we see that there are the disadvantaged in the course of legislation — I think that there are disadvantaged people, and there are many such people in the world — who might be SMEs or consumers. In economics, consumers do not necessarily refer to end-users. For instance, I am a consumer if I buy a pair of slippers, because I pay for it. However, the producer of slippers might also be a consumer, since he has to pay for raw materials or labour before the finished products can reach end-users.

In fact, it is inappropriate for individuals, such as the SMEs about which colleagues are concerned, to take advantage of the competition law to persecute downstream consumers on the grounds that there is abuse of unfair and unequal actions brought about by this stand-alone action system. If we allow downstream consumers or end-users to initiate lawsuits in accordance with the first or second conduct rule provided for in the competition law to be passed in the future to target undertakings with a substantial degree of market power, we can actually give them better protection …… Chairman, you keep flipping through the papers …… the reason is that the Commission is similar to the Consumer Council or other authorities or watchdogs set up in Hong Kong with the same belief. The question is: What procedure will be adopted by people fearing that justice can be sought through stand-alone actions? In fact, I consider it feasible for actions to be brought for these cases by a subvented organization, such as the Legal Aid Department (LAD) or other organizations specified in the law (if any). If this can be done or adequate resources are provided ……

Let me cite a simple example. When I approached the LAD recently for legal aid, I was asked to pay $660,000, or $200,000 for the first instalment, but I did not have the means. Even though I am short of money, the LAD has a way to enable people to obtain funds for a legal battle. If the Government can impose balanced conditions on both parties, which means that everyone, whether rich or poor, can make use of stand-alone actions …… the rich can definitely not pass the means test to receive assistance or become eligible, because even someone like me is required to pay $660,000 for a legal battle. I can be described as having risen to fame all of a sudden. Hence, is it possible for someone who is rich and influential pass various tests on income, assets, market share or market power through cheating and thus be able to abuse this procedure?

In other words, provided that such a procedure is established and adequate resources are provided, and with a sound vetting system in place, stand-alone actions will actually complement the Commission …… like Mrs Fanny LAW, who is also complementary …… two different mechanisms will be available for the person concerned to choose from. When members of the Commission consider that there is no need to deal with the case or the case is not substantiated, and if one more option is available, the Commission will ask the person concerned if he has any chance of winning a legal battle because the two systems are not subordinate to each other. Nor is there any conflict of interest or mutual dependence between the two.

Hence, if we can behave more calmly during the course of legislation, we will be able to see that stand-alone actions …… as a money-burning organ, the LAD must not be open to abuse by individuals. The applicants will still have to pass a vetting procedure. It is only that one more option is made available to them. Should this be the case, we will see a very different picture. The fact that the Commission is now made the only channel through which actions can be brought has raised concern among Members. This comment of mine is not unfounded. During the deliberations of this amendment, I repeatedly expressed my hope that representatives from SMEs or consumers be included in the Commission or the Competition Tribunal. Even if there are no representatives from SMEs, representatives well-versed in the operation of SMEs should be included.

How can we have faith if there are no such people in the Commission, whereas the Commission is the only organ allowed to bring actions? If there are no such representatives in the Commission, such that no people can make representations and be informed or told, the public will be kept in the dark about the unfair situation under the black-box operation, as the Commission cannot let the media learn about the actual situation during its meetings or the relevant information.

What benefits will it bring in doing so? First, the original protection for the rights of consumers, including consumers from all walks of life, will be sacrificed; and second, the functions of the Commission will become overloaded, because all these arrangements are experimental. It is like purchasing a house without a fire escape. Even if the seller says that a fire escape is not required because the house is built with fire resistant materials and will not catch fire,

Chairman, I believe you will still not buy it. You will definitely say, "What can I do if it really catches fire? I cannot do without a fire escape!"

Insofar as this issue is concerned, a major controversial point about the Government is whether there are any biases on its part in considering the retention or otherwise of stand-alone actions in order to secure enough votes and adequate political support in this Council or whether the Government is sincere in offering adequate protection, through the enactment of a competition law, to the rights and interest that downstream consumers or end-users should enjoy according to a reasonable and well-thought-out procedure? I think the Government has failed to give serious and detailed consideration to this point.

Simply put …… we are not being irrational. Chairman, you know that I have always been rational. We once asked the Secretary …… Secretary, please take a look at me! I asked him if there were any similar cases showing some stand-alone actions brought by the very rich who, on the contrary, used a broadsword to hack a mouse? Were there any such cases? Or, were there cases in which a penknife was used to fell a tree instead?

Unfortunately, the Secretary was unable to give me any examples. Instead, he was found talking nonsense, making repetitive comments and straying from the subject, like the accusations you made when I was delivering my speech. We have asked him repeatedly whether there are any examples and whether he can give us some, so that I can explain to the public. However, he was unable to give us any examples. Chairman, this topic is very boring, and I am exhausted, too. Since you decided not to arrange for a one-hour meal break, I have not eaten anything and I am feeling very weak.

From whatever perspective, this amendment is unreasonable. I am 99.99999% convinced that this unreasonable amendment is attributed mainly to the composition of the Legislative Council, which allows people wishing to keep the *status quo* of the market in Hong Kong to cheat the Secretary in the course of legislation. Secretary, please take a look at me — this is what they say. Should the Secretary go ahead with implementing stand-alone actions despite opposition, Members will not vote for him. Although they will not request a headcount, they will simply not vote for the Secretary.

Chairman, the impact of not voting for the Government is definitely more serious than that of requesting a headcount. Hence, I will now do something not serious — requesting a headcount.

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)

SUSPENSION OF MEETING

CHAIRMAN (in Cantonese): Although a quorum is present in the Chamber, it is now already 9.52 pm. Just now, a Member complained of not having dinner yet and feeling very exhausted.

I now suspend the meeting until 9.00 am tomorrow.

Suspended accordingly at eight minutes to Ten o'clock.