

# OFFICIAL RECORD OF PROCEEDINGS

Thursday, 14 June 2012

The Council continued to meet at Nine o'clock

## MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE TIMOTHY FOK TSUN-TING, G.B.S., 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 FREDERICK FUNG KIN-KEE, S.B.S., J.P.

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

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

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

**MEMBERS ABSENT:**

THE HONOURABLE ANDREW CHENG KAR-FOO

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

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

**BILLS****Committee Stage**

**CHAIRMAN** (in Cantonese): Good morning, Members. Committee will now continue to examine the original provisions of clauses 3, 4, 5, 9 and 24, Schedule 7 and the new clause 5A, and the amendments thereto.

**COMPETITION BILL**

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

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

**CHAIRMAN** (in Cantonese): 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)

**CHAIRMAN** (in Cantonese): Members, as you may have observed, every time a Member points out a lack of quorum, the bell must be rung to summon Members to the Chamber, and very often, it will take 10 minutes or longer to form a quorum to resume the meeting. Of course, I appreciate that Members may have very sound reasons for being unable to enter the Chamber earlier, but as you know, we still have plenty of business which we need to deal with in our meetings in the remaining term of the Council, yet the time available for holding meetings is already very limited. I believe you do not want to see our meeting delayed and our precious meeting time whiled away owing to the need to ring the bell to summon you back, especially when members of the public have been watching the live broadcast of our meeting. They will also opine that the precious meeting time should not be expended in such a way. Thus, let me appeal to all of you here, whenever the bell is rung to summon you, please try to hurry back to the Chamber in the first instance.

I will consult you later to see if we need to take any measures to make up for the time lost in waiting for a quorum, such as postponing the ending time of our meeting at night so that the various business items originally scheduled to be completed within the limited meeting time will not be affected too much. May I appeal to all of you here, if you later hear the summoning bell again, please return to the Chamber as soon as possible.

**MR WONG KWOK-HING** (in Cantonese): Chairman.

**CHAIRMAN** (in Cantonese): Mr WONG Kwok-hing, what is your question?

**MR WONG KWOK-HING** (in Cantonese): Chairman, I will act accordingly in response to your appeal. However, Chairman, I would like to ask you to call on those Members who request a headcount to stay in the Chamber and not to leave their seats when they make such a request. Only then will they tie in with your appeal. Like what happened just now .....

**CHAIRMAN** (in Cantonese): Mr WONG, this view of yours has already been raised by other Members a number of times. Yet all appeals remain appeals. I cannot demand or force Members to do something which is not stipulated in the Rules of Procedure. Anyway, we all understand that the Council has its functions, and we are responsible to the public. So please co-operate as far as possible in this regard.

Does any Member wish to speak?

**MR WONG YUK-MAN** (in Cantonese): I thank the Chairman for his instruction, but I will definitely not thank Mr WONG Kwok-hing for his comment. As I kept counting, we were short of only one Member. So long as he comes in earlier, does not stay idle outside and sits here properly, that will do. It is very simple, right? Do not stay idle outside. Come in earlier. Then there will be a quorum .....

**CHAIRMAN** (in Cantonese): Mr WONG, please speak on the relevant clauses, schedule and amendments.

**MR WONG YUK-MAN** (in Cantonese): ..... the meeting will definitely not be cancelled owing to a lack of quorum. Now with the support of the democratic camp, we want to speak. If we go by what you have said .....

**CHAIRMAN** (in Cantonese): Mr WONG, you should speak on the clauses, schedule and amendments which we are dealing with right now.

**MR WONG YUK-MAN** (in Cantonese): ..... no one should speak at all, Chairman. What a waste of time!

Yesterday, I mentioned that the Government had indicated explicitly, once a statutory body has refused to rectify its anti-competitive conduct upon the Government's request, the Government may invoke clause 5(1)(a) of the Competition Bill (the Bill) to enforce the competition rules.

Besides, if a statutory body considers that its conduct should be exempted, it will have to file a separate, individual application for limited exemption under the Bill. Then the Government will vet its application in accordance with the principles in clause 5(2). Yesterday we talked about the four relevant principles which were respectively laid down in paragraphs (a), (b), (c) and (d). The wording in (d) is unclear, but after I spoke, it happened that the meeting was suspended. When I was leaving the Chamber, our brilliant Secretary came to me and said, "Just look it up with a 'Google search'. They all read this way: 'no other exceptional and compelling reasons'." This phrase is acceptable in English, but should it be translated in such a way, buddy? He still tried to argue! Secretary, you are good at English, but your Chinese is very bad. So is the Chinese of the Law Draftsman. Take a look at this English phrase. Can it be translated this way? The Chairman is one of those people in this Chamber who is the most proficient in English, and his Chinese is very good as well. Chairman, will you translate it this way? I am responding to the gentle reminder of the Secretary, who taught me to do a Google search yesterday. Secretary, you have simply copied from others. Is that right? Are things that are copied

necessarily correct? Since you are so fond of copying, I have copied some examples, too.

Under the Bill, a vast majority of statutory bodies are exempted. Such an arrangement has, of course, aroused much controversy. Yesterday we discussed Mr Ronny TONG's amendments. He has adopted an "across-the-board" approach to avoid trouble, whereas the Government's approach is not entirely across-the-board, apart from six statutory bodies, all other statutory bodies are exempted. Yesterday we also mentioned that actually some statutory bodies are involved in competing with the private sector for profits. Matters such as the principles which we have just mentioned, whether a certain statutory body should be exempted, and whether that organization has competed with the private sector for profits, are highly controversial.

In the previous meetings of the Bills Committee, a lot of people have raised different suggestions, and many people have put forth a viewpoint, that is, organizations participating in economic activities, regardless of whether they belong to the public or private sector, should compete fairly. Is such a viewpoint wrong? It is by no means wrong. The competition law should treat everyone equal. There should not be any double standard. That is why Mr Ronny TONG has come up with the across-the-board proposal, under which there will be no discretion for any statutory body. However, such an approach will affect certain organizations which genuinely provide public services. As a result, at that time we proposed that statutory bodies engaging in economic activities may make another form of declaration. According to the Government's information notes, among the 581 statutory bodies, except for six of them, the rest are all exempted. If we study carefully, we will find problems with many of the exemptions.

Let me cite an example. Since the Secretary said that it can be found with a Google search, I have searched for some examples for illustration purpose. Take postal service as an example — the Government is now planning to exempt the Post Office — as we can see from foreign examples, there is a vast difference in the mode of competition for postal service in different countries. The postal service in Hong Kong has operated by way of a trading fund since 1995, but all the staff of the Post Office are civil servants. Such a mode is adopted because the Post Office needs to, apart from ensuring the provision of quality public postal service, exercise flexibility in exploring other related business. The Post



Office operates on a self-financing basis, but is such a mode of operation of the Post Office in conflict with the competition law, especially with regard to abuse of market position? This question merits our concern.

Secretary, since you are so fond of copying from foreign countries, I am going to quote a foreign example. In 2007 the European Union (EU) passed the Third Postal Directive, which aimed at full market opening in 2013. The United States also passed a similar bill in 2006. Yet you have not drawn reference from these experiences. Under the full market opening policy of the EU, the prime objective is to divide the various postal services into two categories. The first category is public postal services which continue to be exclusively provided by the Government with the performance standard guaranteed at a certain level, so as to promote public interests — these are all copied — this usually refers to class 1 local mail. The second category is other postal services, for example, parcels, express delivery, bulk mail, and delivery of publicity materials and magazines. These posted services need to be fully opened to the market and subject to regulation under the competition law.

The Government divides the postal services into two major categories and implements different regulation. It will certainly be the best if the related operating costs of the Post Office can be distinctly classified into two categories as well. However, it is not easy to establish the respective contribution made to the various types of postal services by the extensive infrastructural facilities which the Government has set up for the provision of postal services. The scale of operation and network efficiency of the Post Office is also very obvious. As a result, to confirm whether the business practice of the Post Office has abused its market position, it is indeed necessary to conduct a detailed economic analysis. The EU's practice is also available for you to copy, as you kept asking me to do a Google search!

In 2002, a postal company which dealt with newspapers and magazines in Spain complained that the former government department, which exclusively dealt with postal services, had abused its market position. The company against which the complaint was lodged used to be a government department which exclusively dealt with postal services. According to its business practice, if an enterprise signed a contract to assign all the postal services to this company, this company would offer a discounted price, covering both exclusive and open postal services. Consequently, other private enterprises which engaged in open postal

services were faced with unfair competition and unable to secure business from big enterprises. This complaint was substantiated after investigation. This is learning from the good examples of other places .....

**CHAIRMAN** (in Cantonese): Mr WONG, how is your present speech related to the clauses, schedule and amendments under our current discussion?

**MR WONG YUK-MAN** (in Cantonese): Of course they are related, Chairman. Now I am discussing the fourth condition among the principles set out in clause 5(2). Although this condition is incomprehensible, I will try hard to understand it. That is, "there are no other exceptional and compelling reasons of public policy against making such a regulation".

At present, there are some 500 statutory bodies, most of which are granted exemption. Only six of them are not exempted. This has aroused a big controversy, and I have not spoken on it yet, Chairman. Earlier, we have already proposed in the Bills Committee that statutory bodies which conduct economic activities or actively engage in economic activities should not be excluded from the Competition Ordinance. The approach proposed by the Government, which is similar to being across-the-board, and Mr Ronny TONG's across-the-board approach respectively fall into two extremes. In formulating the competition law, how come the Government did not carefully study the degree of involvement of the various statutory bodies in economic activities, or require statutory bodies to make a declaration when they engage in economic activities, or set up a mechanism to put statutory bodies under the regulation of the relevant rules in the Bill?

I have cited foreign postal departments as examples because the Secretary kept telling us during the scrutiny of the Bill that the Government often drew reference from foreign examples. Yesterday, when I brought up the problem concerning the translation, he reminded me again to do a search on the Internet, saying that such English expressions were adopted in foreign countries .....

**CHAIRMAN** (in Cantonese): Mr WONG, you are repeating your point.

**MR WONG YUK-MAN** (in Cantonese): ..... let me explain to you, I am not filibustering. This matter requires careful and thorough analysis. This is a competition law, Chairman. Hong Kong is having an unprecedented competition law for the very first time. For this reason, we must look into each clause and the spirit behind ..... and the Members who proposed the amendments have spent such a long time ..... I did not talk much about these things in the Bills Committee. I have only talked a little. Since he asked me to do a search, I searched for some information and found this good example. I came to learn that the EU adopted such an approach. Chairman, if you think I should not go on and consider my speech irrelevant to the subject, of course I need to refute you, but in the end, the decision is up to you. I can shift to talk about something else. There is no problem at all. However, if you let me go on, those who are watching the television will know that there is substance in what we say. We are not yapping like a dog here.

Chairman, another example which is also very famous is the postal department in Sweden. Right now I am discussing the Hong Kong Post Office. As I have said earlier, the Post Office operates by way of a trading fund on a self-financing basis, but the staff of the Post Office are civil servants. Such a mode of operation will give rise to embarrassing situations. When a certain service of the Post Office enjoys a dominant position in the market, it will affect other ..... are there other private enterprises in the market which provide the same service .....

**CHAIRMAN** (in Cantonese): Mr WONG, are you still going to speak on exemption for statutory bodies?

**MR WONG YUK-MAN** (in Cantonese): Let us discuss the exemption mechanism again. I will respond to Mr Ronny TONG's earlier remarks. Just now it was mentioned that such applications would be vetted in accordance with the principles set out in clause 5(2). In Mr Ronny TONG's speech, he disapproved some of the principles, considering that individual principles are irrelevant to competitive conduct. However, I opine that all these four principles

must be considered in deciding whether or not to grant exemption. Moreover, the provisions have only listed the principles which the authorities need to consider. They have not set out the weight which should be laid on each principle. Hence, Mr TONG is a bit over-anxious. That means he has worried too much. Although this Government is pretty lousy, we must give it certain discretion on this issue. I wonder if Mr Ronny TONG knows what I am saying, but he should know. He can respond to me later, since he is the one who proposed the amendments. Please do not be idle.

Just now we talked about the fourth principle. Let me add a point. Secretary, when we are drafting laws, never follow the mindset and writing style of law drafting on the Mainland. The paragraph which provides for the fourth principle is in the typical Mainland style.

In our view, statutory bodies should know better than the Government or other people about what activities conducted by them will make them qualified for exemption, particularly when the Government has indicated that statutory bodies should comply with the competition rules. Since they have to comply with the rules, the relevant statutory bodies should first, as a matter of course, learn about the Competition Ordinance. Hence, we propose requiring statutory bodies to apply to the relevant authorities for exemption on their own initiative, which is a more desirable approach. In our response to the amendments proposed by the Government as well as by Mr TONG and Mr HO, our attitude is very clear. That is, we do not want an across-the-board approach. The Government's approach is similar to being across-the-board, whereas Mr Ronny TONG's amendments go in the opposite direction. We propose requiring statutory bodies to apply to the relevant authorities for exemption on their own initiative.

Thank you, Chairman.

(Ms Audrey EU raised her hand in indication)

**CHAIRMAN** (in Cantonese): Ms Audrey EU, are you requesting to speak?

**MS AUDREY EU** (in Cantonese): Chairman, yes. I have pressed the button, but I do not know why the button is out of order. No matter how hard I pressed, there is no response.

Chairman, I would like to speak on the joint debate. This session of the joint debate concerns the amendments proposed by Mr Ronny TONG, Mr Albert HO and Mrs Regina IP, all of which are related to exemption for statutory bodies.

Chairman, first of all, let me state clearly that I support Mr Ronny TONG's amendments, or I find his amendments more comprehensive among the three sets of amendments. The reason is not that Mr Ronny TONG belongs to the Civic Party. I will explain why I find his amendments more desirable among the three sets of amendments in a while. Even if Mr Albert HO's amendments cannot be passed, we still consider that his amendment has its merits, and I will also explain this in a while. As for Mrs Regina IP's amendment, we highly support the original spirit behind her amendment, which is actually the same as that behind Mr Ronny TONG's amendments. Yet the approach proposed by her is different. I will also explain later why we can only abstain on Mrs Regina IP's amendment.

Chairman, first, let me talk about why I find Mr Ronny TONG's amendments tally most with the principle of the rule of law among the three sets of amendments. As we know, and some Members have also mentioned earlier, the principle of the rule of law is that everyone is equal before the law. Therefore, once the Competition Ordinance is enacted, it should apply to every person, organization and group. Of course, it is not infeasible to exempt certain organizations on special grounds in compliance with certain criteria, but it must be done with prudence. The approach proposed in Mr Ronny TONG's amendments is that all statutory bodies should be subject to regulation under the law, and there should be no exemption. However, after following the procedures in clause 5 and Schedule 7, the Competition Commission (the Commission) may decide which bodies have met certain requirements. In particular, the bodies that have met the criteria set out in clause 5 can be handled individually. Such an approach tallies most with the rule of law.

I would also like to explain why I particularly need to expound and read out the detailed opinions previously offered by the Law Society and the Bar Association on this important subject. I think it is necessary to put them on record in order to show that the Civic Party supports the relevant amendments not

because they are proposed by Mr Ronny TONG, but on the ground of the rule of law.

Chairman, I would like to read out the recommendations offered to the Bills Committee by the Law Society. I know these views have been mentioned before, but since there are a few points which I particularly wish to explain, I need to read them out. Paragraph 3.1 reads as follows ..... sorry, Chairman. Since the submission is written in English, I have to read it out in English: "There is no apparent reason why statutory bodies that are engaging in economic activity should have a *prima facie* exclusion or why parties potentially affected by exclusion of statutory bodies should be denied the opportunity to be heard on whether an exclusion should be granted."

Chairman, as you can see, the concern of the Law Society is that it appears that statutory bodies which have conducted commercial or economic activities should not be exempted from regulation under the Competition Ordinance. This is where the focus lies. Then the submission refers to Singapore: "A similar exemption provision for statutory bodies can be found in the Singapore Competition Act. However, it was noted in Singapore that such exemptions would be reviewed (although six years on this review has still not been conducted) and Hong Kong's Legislative Council Secretariat Research and Library Services Division notes that these broad exclusions from Singapore's Competition Act have been criticized for creating an uneven playing field for businesses."

Chairman, I need to pause here. Why do I bring up this point in particular? It is because Singapore has similarly adopted Hong Kong's approach and granted exemption to statutory bodies. The Singapore Government had stated expressly that it would conduct a review. It requested its people to trust it and not to worry. Yet we have found that six years have lapsed, but the Singapore Government still has not conducted any review. That is often the case for the Government. I cannot accuse the Government of deceiving people, though when it raised the matter, it made all kinds of promises, but in reality, owing to some unknown reasons, such as the change of the Special Administrative Region (SAR) Government, the change of the Chief Executive, or that it was busy doing something else, or for whatever reasons, it kept stalling without doing any work. As such, I would like to explain here why we think Mr Albert HO's amendment is also very important.

Let me take the opportunity to explain about Mr Albert HO's amendment. He supports the Government's approach, but he has added a sunset clause, that is, the relevant provisions will expire in three years. This is actually a fallback mechanism which prevents the SAR Government from failing to keep its promise like the Singapore Government. That is often the case for the Government. Once a Bill has been passed, it can kick down the ladder and wash its hand of everything. Although you press for it to do the work, if it does not do so, there is nothing you can do. Hence, Mr Albert HO's amendment has such an advantage that with the inclusion of a sunset clause, the provisions will expire in three years, and the Government will be forced to conduct a review in three years' time. If a review is conducted, it will come up with the most appropriate way to decide which statutory bodies should be exempted or otherwise, thereby giving the Legislative Council the opportunity to examine the issue again and preventing the Government from washing its hand of the issue.

Chairman, let me continue to read out the submission of the Law Society: "Other jurisdictions such as the UK and EU have opted to omit such a general and broad exemption in legislation but focused on analysing the general provisions. For example, the European Court of Justice in the FENIN case held that the public bodies would be caught under the rules if they act as 'undertakings' and are undertaken for an 'economic purpose'. Under the Bill, the rules are only potentially applicable to undertakings that engage in economic activity. On interpretation, this means that the rules would, if applied to statutory bodies, only apply to them insofar as they were carrying out ....." (*microphone malfunction*) Chairman, I need to pause here. The Law Society has also pointed out in its submission that in places like the European Union and the United Kingdom, the granting of exemption depends on whether the relevant organizations or statutory bodies have engaged in economic activities. We concur with this. I think this is a relatively fair principle in that the practice is not across-the-board, which means granting exemption regardless of whether there is any economic activity or not. Therefore, we consider that the approach taken by the Government this time has a big shortcoming.

The Law Society continues: "There are hundreds of statutory bodies in Hong Kong which operate economic activities. Such broad exemptions of statutory bodies as it is currently proposed will create an uneven playing field between the government and private sectors, and have an impact on the economic efficiency of specific markets, in particular where the statutory bodies are in

direct competition with private entities or have crowded out or prevented competition from the private sector. Furthermore, given that Hong Kong is a capitalist economy which has hitherto focused on minimal and efficient government, it seems less appropriate for us to have such broad exemptions, and particularly when other economies which are mixed market economies with a high degree of government involvement do not have any exemption for their government bodies. Another concern is that the general exemption may draw attention away from whether the bodies that would enjoy the exemption are truly providing public services."

I believe that the Secretary has also noticed this aspect. Of course, a number of deputations which have offered us their opinions hold the view that a lot of statutory bodies which receive public subsidies have provided many good activities or assistance to their industries. Nevertheless, statutory bodies should follow a very important legal principle, that is, fair competition. If a statutory body has done something against the first conduct rule or the second conduct rule, there is no reason for it to be granted exemption merely because its ongoing work can help certain industries. The advice of the Law Society has rightly pointed out that as Hong Kong is a place which enjoys high economic freedom, government intervention or public subsidies should not cause distortion in the market, which will draw attention away from whether the statutory bodies are truly providing public services.

The Law Society continues: "The EU, the UK, Australia, New Zealand, Japan and many other economies, with some qualifications in certain circumstances, generally subject statutory bodies that are engaging in economic activity to their competition laws. Two obvious exceptions to this are the US and Singapore. As the Research and Library Services Division Legislative Council Secretariat report of 25 June 2010 observes, however: as to the United States: 'In any event, federal government departments and agencies seldom engage in commercial activities'; and as to Singapore: 'Government departments and statutory bodies are exempted from the competition law. However, there are concerns that such arrangements may create an unfair playing field for businesses. Examples are Government linked corporations.' For the above reasons, whilst we agree on having exemptions for certain statutory bodies, a general blanket exemption involves risks of abuse as many statutory bodies are likely to fall within the current definition. Certainty as to which statutory bodies are covered is desirable so that the extent of the exemption is known. Rather



than exempting all statutory bodies from the conduct rules (with regulations used to 'opt-in' those that are engaging in economic activities), it would be preferable to have an agreed list of statutory bodies which are wholly or partly exempt from the conduct rules annexed to the Bill. There may be a provision for other statutory bodies to apply to the Commission for exemption from certain aspects of their activities if they consider there to be some justification for this, with affected parties having the right to be heard."

Chairman, in short, the recommendation of the Law Society is that there must be an open procedure which enables the relevant statutory bodies or other interested organizations or stakeholders to lodge their applications. This is also reflected in Mr Ronny TONG's amendments.

However, there is one point which I find rather regrettable, Chairman. I would like to read out a document provided by the Government to all the Members to explain why it does not support Mr Ronny TONG's and Mr Albert HO's amendments. This document was issued in May. I would like to read out paragraph 7 to you. This reflects the Government's long-standing attitude and practice. The document reads, "Even though exempted bodies are not subject to the competition rules in the Bill, they are still required to adhere to the competition principle underpinning the rules. The Administration will ensure that these exempted bodies would not undertake anti-competitive activities unless there are justifiable causes. Exempted bodies found to have acted against the competition principle would be requested to rectify their anti-competitive behavior."

Chairman, up to the present moment, the Government has still not awakened, and its attitude has all along remained the same. Very often, when Members strive for something from the Government, pointing out the problem and the necessity to introduce legislation, the Government will respond that it agrees to introduce legislation, but the Government will be exempted. We often ask, why is the Government exempted? Why does the Government need not abide by the law? The Government will then explain, government officers will certainly follow the legal principles. As in the case of legislating on the sale of first-hand properties, the Government pointed out that sales brochures of the Housing Authority were not subject to regulation. We asked why. The Government then stated that although the legislation was not applicable to the

Housing Authority, it would ensure its compliance with the law. This kind of situation happens all the time.

Why is our Chief Executive Donald TSANG so miserable now? I think one of the reasons is that certain Members have caused him the trouble. At that time we requested that the relevant legislation should be applicable to the Chief Executive as well. Since all the civil servants and accountable officials must obtain prior approval, the same rule should apply to the Chief Executive. An independent committee could be established to be responsible for vetting his applications, right? Yet certain Members said no, because the Basic Law had already imposed regulation on the Chief Executive, stipulating that he must be honest and incorruptible in performing his duties; since he was the leader of the SAR who held a special constitutional position, there was no need to put him under regulation. That is how the problem arose. It turned out that there was no law for him to follow. Consequently, Andrew LI, former Justice of the Final Court of Appeal, published a study report, pointing out that this was caused by the flaws of the system.

Now let us look at paragraph 7 of this document issued in May. The Government still asked us not to worry. Although more than 500 bodies are exempted across the board, the Administration ..... let me read it out again: "The Administration will ensure that these exempted bodies would not undertake anti-competitive activities unless there are justifiable causes." What will happen if they undertake such activities? The document reads, "Exempted bodies found to have acted against the competition principle would be requested to rectify their anti-competitive behavior."

Sometimes what is really infuriating is that after the Government introduced such a significant Bill into the Legislative Council and we spent so much time on its scrutiny, the Government deleted the most substantial part. When we sought compliance from the Government, the Government said there was no need to worry. The relevant statutory bodies would comply with the rules. In the event of violation, the Government would ask them not to violate such rules. This made us feel that the whole legislative process was a bit flippant and ridiculous.

Thus, Chairman, I find it worthwhile for us to bring up the Bill, particularly this part, and remind the Government once again that such an attitude in legislation is totally unacceptable. *(The buzzer sounded)* Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Mr Ronny TONG, this is the fourth time you speak.

**MR RONNY TONG** (in Cantonese): Chairman, yesterday I spoke twice. In my first speech, I expounded clearly on my justifications for proposing the amendments, whereas in my second speech, I explained why we objected to Mrs Regina IP's amendment but supported that of Mr Albert HO.

Today in my third speech, I wish to talk about Schedule 7. Mr Jeffrey LAM criticized me in his speech yesterday. He is not present at the moment, but I hope he will be able to hear this speech of mine. One of the reasons for his criticism was that when I was promoting the formulation of the competition law, in 2005 ..... at the end of 2004 I published the first study report, in which it was mentioned that I had consulted different trade associations. He claimed that I had included in the report the name of Hong Kong General Chamber of Commerce (HKGCC), to which he belonged, but I did not put in their views.

Chairman, such a comment is not correct. First, before I consulted the HKGCC, of course I had formally sent it a letter to request its committee members to send a representative to meet with me. It was absolutely not what Mr Jeffrey LAM had said that I bumped into so-and-so in the street, chatted for a while and then added the HKGCC in the report. That was not the case.

Second, I have clearly pointed out in the report that the HKGCC objected to the enactment of this piece of legislation. Though the HKGCC was against the competition law, does that mean I had to give up, or that I had not consulted it? That was absolutely not the case. Chairman, while I had consulted the HKGCC, I did not have to put forward its stance on its behalf. That is not my job in the Council. I can clearly point out that having consulted all the trade associations back then, I drew the conclusion that two big concessions should be made, and one of the big concessions was about acquisitions and mergers, which means the present provisions contained in Schedule 7.

Chairman, the two big concessions made by me are respectively that I no longer insist on private enforcement, and that I no longer insist on including the regulation over acquisitions and mergers in the competition law. Whether it is from the perspective of the past or of today, these two concessions remain the same to me. Both of them are highly significant concessions which have responded to the major oppositional views in the business sector.

At that time I did not insist on private enforcement because all along, there was no right of class action in Hong Kong. However, as evident from the competition laws around the world, it may be necessary to a certain extent to rely on private action to promote such legislation after all, since anti-competitive commercial activities actually take place every day in varied ways. To combat the "big tigers" in its enforcement, very often the Competition Commission will not have sufficient resources and manpower to fight those medium and even small "tigers". It can only count on the victimized small traders and even consumers to initiate private actions so as to enforce the law. Hence, this is a very significant concession in the promotion of the competition law.

The concession in respect of mergers and acquisitions is also highly significant. Why? The reason is actually obvious. The objective of the competition law is to combat monopolization. Thus a number of Honourable colleagues often stand forward and call out loud for anti-trust legislation but not a competition law. It actually only exposes the inadequacy of their perception of this discipline or policy. If there is competition, monopoly will not arise. If there is monopoly, competition will not exist. They are the two sides of the same coin. Hence, regarding the remark about supporting anti-trust legislation but not a competition law, people who have profound knowledge in this field will inevitably find it a bit ridiculous.

Mergers and acquisitions are also the means which give rise to monopoly. Suppose in a competitive environment, there are four or five stakeholders in the market, but suddenly, two of them merge and then acquire the third one. In this way, the market has actually been monopolized by the operator who has ultimately become independent in the market. If the part concerning acquisitions and mergers is not put under regulation in advance to avoid monopolization, how can the competition policy be promoted? It will be rather difficult to do so.

Thus, logically and practically, regulation over acquisitions and mergers to protect the competitive environment is an important step. However, in the economic environment in Hong Kong, the message given to me by the vast majority in the business sector at the end of 2004 and in 2005 was that acquisitions and mergers were common practices. Many people in Hong Kong would do so, especially since Hong Kong was a small economy. Markets were generally smaller, so it was easy to conduct acquisitions and mergers.

**CHAIRMAN** (in Cantonese): Mr TONG, are you now responding to the view given by Mr Jeffrey LAM yesterday?

**MR RONNY TONG** (in Cantonese): No. I am talking about Schedule 7.

**CHAIRMAN** (in Cantonese): You are talking about Schedule 7?

**MR RONNY TONG** (in Cantonese): Because Schedule 7 is exactly about acquisitions and mergers, Chairman. You will see that if you take a look at the Bill. Hence, this is a significant concession.

Nevertheless, the existing Telecommunications Ordinance has actually provided for a set of comprehensive competition laws. The provisions concerning acquisitions and mergers in that Ordinance have made the first step of enforcement against anti-competitive conduct. When that Ordinance was enacted, I remember, Secretary Gregory SO was not the Secretary, but it was also under his charge. He told us that the inclusion of acquisitions and mergers in the competition law was not accepted, but the existing provisions concerning acquisitions and mergers in the Telecommunications Ordinance would be retained. The way to retain them was to include the relevant details in Schedule 7.

So, that is the historical background of the issue. In my view, the competition law in Hong Kong should ultimately provide for regulation over acquisitions and mergers, but not every acquisition and merger will be against competition because in certain markets, acquisitions and mergers will enhance

competitiveness. During the course of enactment of the Telecommunications Ordinance, I received some professional advice. In particular, when I studied this issue with the staff responsible for the enforcement of the competition law in the Office of the Telecommunications Authority, they told me that nearly all acquisitions and mergers in Hong Kong's telecommunication market had never encountered any obstacles. It is because as long as certain legal requirements are met, thereby facilitating the market to continue to have sufficient competitiveness, acquisitions and mergers may not necessarily be anti-competitive practices in themselves.

Thus we should not have any pointless fear of the formulation of provisions to regulate acquisitions and mergers. Yet regrettably, all along the business sector has regarded the formulation of regulatory provisions for acquisitions and mergers as non-negotiable. I would like to tell Mr Jeffrey LAM, the two big concessions made during the formulation of this Bill have already addressed the biggest concern of the business sector. Of course, the business sector can claim that it does not want any competition law. So long as no one pushes it forward, there will be no need to handle this issue.

Chairman, that is our view on Schedule 7. Before I end my speech, I also wish to make a brief response to the remarks made by Mr WONG Yuk-man and Mr Albert CHAN yesterday, though it seems Mr WONG Yuk-man is not present right now. In short, it is not my intention to include all statutory bodies in the Bill across the board. I have merely deleted the provisions which exempt these statutory bodies across the board. In fact, the deletion of the provisions which exempt statutory bodies in the Bill will absolutely have no impact on its enforcement efficiency or the principle in promoting the competition policy.

I have pointed out that clauses 15, 31 and 32 have provided for an adequate mechanism to exempt statutory bodies which should be granted exemption, especially clause 15. Mr Albert CHAN has said that this is a blanket exemption. Right, it is an exemption which is provided for certain conduct, and such exemption may be granted in respect of each category of agreement or conduct without the need to lodge individual applications. Of course, the focus is placed from the economic angle or the angle of competition. Committees which deal with matters of competition all over the world adopt such a criterion and handle this issue by exempting certain public utilities or public services with powers

conferred by the law, having taken economic factors and competition into account.

What we oppose is granting exemption administratively. The present provisions in clause 3 enable the Chief Executive to grant exemption administratively when he finds the need to do so. We do not regard this as a transparent mechanism. Neither do we see under what criteria such a blanket exemption is handled. Therefore, I opine that such a practice, which is against the spirit of the rule of law and contradictory to the spirit of the legislation, must be scrapped. However, that does not mean it is necessary to include all statutory bodies into the scope of regulation under the law across the board, since the law should, as a matter of fact, exercise regulation over every person, every organization and even the Government. If even the law is unable to exercise control over the Government — you can take a look at what happens in the north. If the Government is not subject to regulation under the law, even if the government official has killed someone, there will be no need to carry out any investigation in accordance with the law. What kind of situation will arise? That is the present situation.

Hence, Chairman, all in all, it is not my intention to exercise regulation across the board. Yet on the contrary, I think basically the rule of law is intended to apply across the board so that everyone will be subject to regulation under the law. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Mr Frederick FUNG, this is the second time you speak.

**MR FREDERICK FUNG** (in Cantonese): Chairman, I am speaking for the second time. In my first speech, I expressed some views on matters of principles. I wish to respond to what Mr Ronny TONG said earlier in my second speech. In addition, I want to set the record straight with regard to the remarks of "Yuk Man" and "Long Hair" earlier. I think they gave the wrong examples.

The amendment proposed by Mr Ronny TONG is guided by two major principles. The first principle is the spirit of the rule of law mentioned earlier.

Actually, as I asked in my first speech, should we interpret the spirit of the rule of law across the board without allowing for any flexibility? I feel that the competition law should not be applied across the board, since many social issues, which may involve modes of economic operation, cannot be dealt with by the people, but have to be dealt with through the Government's power.

In my previous speech, I also cited some examples such as the Housing Authority and the Hospital Authority. If we interpret the spirit of the law across the board, statutory bodies such as the Housing Authority would obviously have to be regulated and restricted by the competition law. Conversely, if you have to make an application and fulfil this and that condition to be exempted, each organization will make an application individually and argue clause by clause each provision. This way, the argument will take another 10 years. Can the Housing Authority be exempted? Can the Hospital Authority be exempted? Can the out-patient service under the Department of Health be exempted? Can the Airport Authority be exempted? Can the Urban Renewal Authority be exempted? As a result, all the existing operations have to be stopped immediately and no one knows how long it will take to decide whether these statutory bodies can be exempted.

Now, we are doing it the opposite way. The statutory bodies are exempted first. If some practices are not authorized by the Government, do not serve the people's immediate needs and are not restricted by the competition law, the Government can use its political power or influence or even political control to prohibit them. The present legislation exempts all statutory bodies, unless they fail to fulfil certain conditions, whereas Mr Ronny TONG proposes in his amendment that there would be no exemption unless certain conditions are met.

First, I agree with the Government's suggestion. In my view, even for those statutory bodies which are economic entities — to use Mr Ronny TONG's words — requiring these entities to change is a big task, and there may be many arguments or even lawsuits. Each lawsuit may take five or 10 years. That is why I do not think we should make any changes. Changes must be carried out gradually. We should let the statutory bodies continue to operate in the current mode.

Just now, I talked about the spirit of the rule of law. Actually, Mr Ronny TONY also gave one example yesterday about whether government vehicles are



allowed to jump the red lights. As Mr Ronny TONG pointed out, while police cars and ambulances may do so, other vehicles may not. Actually, the Government has also exempted police cars. Hence, there are some exceptions under the rule of law. My question is whether the Housing Authority should be police cars, ambulances or ordinary government vehicles? In my view, it is like an ambulance. While the market rent is high, public housing rents are 25% or 30% of the market rate, and Home Ownership Scheme flats are sold to people at 70% of the market rate. Do we think the Housing Authority is an economic entity, or an ambulance under the rule of law?

In my view, basically every statutory body has its social objectives and deals with some social issues. Of course, would they go too far in dealing with the social issues? It may be possible. For instance, the Housing Authority used to build Home Ownership Scheme (HOS) flats. As we all know, the early HOS flats are very similar to public rental housing (PRH) units. But as time went by, the quality of HOS flats had improved with the participation of private companies under the Private Sector Participation Scheme. As a result of the improvement, the quality of HOS flats has become similar to or close to private flats.

This is the case with the Home Ownership Scheme estate Hoi Lai Estate in Sham Shui Po. In 2002 or 2003, after Donald TSANG, who was Chief Secretary at the time, announced the cessation of the sale of HOS flats, the estate was turned into PRH, a luxury PRH. Is this going too far, building such high quality HOS flats and then turning them into PRH? It has certainly gone too far. The estate is not like the average PRH. Compared with private flats or buildings in some old communities, it is even better than private flats in many old communities. However, the units in that PRH are rented to the public at a rent of \$1,000 to \$2,000 a month. Is this the conduct of an economic entity? Maybe it is. Whether it is or it is not, there would certainly be controversial.

Does it mean that this estate should not be converted into PRH instead of being sold? I think the definition of "economic entity" is too general and too rough. Do we have to debate and clarify the meaning of "economic entity" before enacting the legislation? In my view, we should enact the competition law as soon as possible. Under these circumstances, I would rather we enact the competition law, and allow the current operation to continue.

By "allowing the current operation to continue", it means that organizations that involve in economic activities and may be in conflict with the market economically can continue to operate. Do not make these issues a bone of contention, since every case can lead to disputes. This is how I differ from Mr TONG in terms of how we see the competition law.

Chairman, the second point I want to make is — if I remember correctly, it is something that Mr WONG Yuk-man said, and the other example was given by Mr LEUNG Kwok-hung. Yesterday, Mr LEUNG Kwok-hung blasted the Urban Renewal Authority (URA). The URA, a statutory body, is responsible for the redevelopment of many old areas, and it has made a lot of money. But if it is not regulated by the competition law, does it mean the URA would stop making money? Since it adopts the practice in private sector in acquiring old buildings, would people think that it has turned into the private company that has been criticized for actively acquiring properties? I do not know if that company is a developer or not, but it is now a listed company. Would it turn into that?

As we can see, the URA is under our influence and under the pressure from this Council from time to time. The Development Bureau under Mrs Carrie LAM, Secretary for Development, also oversees the URA. We can see that the URA is changing its direction of development and is no longer like a developer. More importantly, even if it makes profit, the money is spent on the redevelopment of old districts and the money will not fall into private hands. Is the competition involved related to public interest?

I will cite two examples to show that the URA's present changes differentiate it from private developers. One example is, as we all know, the recent development where the URA can step in if 67% of owners in a building make a request, and with the consent of 80% of owners, it can redevelop the old building. I do not know if developers would do so. Of course, in terms of the redevelopment of an old district, you need to build public amenities in addition to redeveloping the buildings. I wonder if developers would do such a thing.

Another example is that in redeveloping old districts, residents (including myself) have always criticized the tendency to replace the demolished buildings with high-rise buildings or luxury apartments, coupled with a large shopping mall with French windows. These two approaches of redeveloping old districts are wrong. It is like putting up a 40-storey building in the midst of seven-storey old

buildings, towering over them. As a result, middle-class (or even upper middle-class) households will move into a low-income community. I wonder if you have seen a Japanese movie called High And Low 30 years ago, describing the social effects produced. Do not imagine that there will be harmony by mixing rich and poor people. It might create another kind of conflict.

Secondly, the strongest asset of old districts is the ties between neighbours. People know each other and care about one another. About a year ago, the Faculty of Medicine of the University of Hong Kong conducted a survey and found that while people living in old districts are poorer, with poorer living conditions and health, their happiness index is surprisingly higher than that of those living in newer districts. I think one of the most important reasons is that those living in old districts know one another, including people living upstairs and downstairs, and even all the people living in the same building. In a 40-storey building, you have to open door after door to return to your own unit. You do not even know your next-door neighbour, let alone people living upstairs and downstairs.

Agreeing with our view, the URA has recently announced that in future, the redevelopment of the Sham Shui Po old district will no longer adopt the traditional URA model. Luxury apartments and large shopping malls will not be built. Instead, there will be street shops and SMEs can rent them to do business. These are things that developers will not do. If the URA is covered by the competition law and is not exempted, it will not be able to help communities that need to be redeveloped.

The second example I want to talk about is the MTRCL, which was mentioned by Mr WONG Yuk-man, if I remember correctly. There are two problems with this example. First, he thinks that the MTRCL should be regulated, since it is not regulated now. Once it is regulated, it can no longer increase its fares rashly. But is this true? Can it raise its fares rashly because it is not covered by the competition law? Maybe the opposite is true. It can increase its fares rashly. It can raise fares whenever it likes. It is the MTRCL which makes the decision. When the company wants to make more money, it will raise its fares. Why should it reduce its fares?

Conversely, to a certain extent, if a statutory body is really influenced by the Government — of course, we are assuming that the Government knows that

there will be serious political consequences if it does not act when problems come up. But I believe the most important question is that it is a wrong example, because the MTRCL is not a statutory body. The MTRCL is a listed company. Basically, it should not and cannot be exempted from the competition law because it is a statutory body — sorry, I mean a listed company. At present, we can express our views about the decisions of a listed company — such as fare hike, and force it to make small concessions through the influence of the Government as the largest shareholder, rather than through legislation. It is a political factor.

As for the examples that I cited earlier, once they are included in the list of bodies exempted, the relevant organizations will not be regulated by the competition law. With the freedom of being exempted from the competition law, they will be able to fulfil ambulance-like functions. These statutory bodies include the Housing Authority and the URA that I cited earlier, and even the Hospital Authority.

Chairman, I still think that in principle, this competition law should be passed and enacted as soon as possible. Even though we call it a "toothless tiger", we can make it grow teeth once we have the tiger, so that it will fulfil the functions of the competition law. Even if I disagree with Mr Ronny TONG, our only disagreement is that I would rather we deal with the problem later on, instead of talking vaguely about economic entities now. I think other groups also agree to enact the competition law soon, including People Power, so that we can let some organizations continue to fulfil their functions as an "ambulance" through exemption. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Dr Margaret NG, this is the fourth time you speak.

**DR MARGARET NG** (in Cantonese): Chairman, I did not expect so much discussion in this session. The more I have heard, the more I feel that this Council suffers slightly from schizophrenia, especially in terms of its phobia of the law. On the one hand, whenever something happens in society, Members would say we must legislate to regulate certain conduct, and so a piece of legislation is enacted. However, you will find that Members with a legal background in this Council are very hesitant about legislating for the sake of one

incident. At the same time, there is another phenomenon. After legislating, many Members would say that while they support the legislation, they want some exemptions. Whether it is the race discrimination law, the competition law or other laws, as long as they are worried about the laws and deem that there are unclear parts which may give rise to lawsuits and considerable legal costs, they will ask for exemptions.

Nevertheless, Chairman, we are not really in favour of this course of action. When we scrutinize bills in this Council, the most important thing is to use our legal knowledge. If we have made any contribution to the legislative work of this Council, it would be helping Members to anticipate which clauses might lead to ambiguity, and to make those clauses clear in order to avoid future lawsuits. One method is to follow the same principle always. Once we find this works and after many trials, we will know what to do. However, if one has exemption and the other has exemption, the effectiveness of the law will become more and more doubtful.

I was much struck by Mr Frederick FUNG's remarks just now. Chairman, we have to follow some principles in enacting legislation. Chairman, just now, Mr Frederick FUNG talked about the Urban Renewal Authority (URA), which is in part two of the information provided to us by the Government on exempted statutory bodies, that is, bodies that have insignificant amount of economic activities. It is No. 155. However, Mr Frederick FUNG was talking about the quality of Home Ownership Scheme flats, whether competition is involved, and whether the public will not benefit if no exemption is granted.

Actually, what we should not do is to give across-the-board exemption. Does the Home Ownership Scheme (HOS) compete with the private sector? Chairman, you are familiar with this kind of argument. When the quality of HOS flats is too close to that of private residential flats, developers would raise objection. What would be the result? The result would be that this Council will discuss whether we should build public housing, whether this is consistent with public policy and public interest, and see if the public support or oppose it. If we can ensure that the provisions are clearly defined, the principles will become very clear after some time. However, with blanket exemption, if the URA acts according to commercial principles, as Mr Frederick FUNG has said, we have no power to deal with it. If blanket exemption is not granted to all

statutory bodies, the URA would have to talk to us about which matters can be exempted and which cannot.

Chairman, Ms Audrey EU expressed the views of the legal sector earlier. I would like to talk about the impact on the legal sector, and to show that "we have been through this once". When the Government first proposed the competition law, the legal sector I represent already expressed some concerns. As you know, we have scale fees. Charging scale fees is quite a common practice. Would the competition law affect the charging of scale fees? After some discussions, there was a view that the scale fees of all solicitors should be exempted, while others deem it unfeasible. However, how come solicitors do not think it is a problem now? Because we do not think we need to be exempted as a body. However, we need to discuss it as a matter of public policy.

Chairman, why do I say "we have been through this once"? Chairman, you might recall the Legal Services Legislation (Miscellaneous Amendments) Bill 1996, under which the then Attorney General Jeremy MATHEWS sought to abolish the scale fees for conveyancing. He did it so hastily that the legal sector reacted strongly. Of course, if you look up the law books and the legislation, you will know that the scale fees for conveyancing have still not been abolished, since we managed to resist it. But how come they exist in name only? Because there is another clause which makes the fees freely negotiable.

How come the Government and the community were strongly opposed to the scale fees for conveyancing before 1997? Apart from monetary considerations, the reason was that they prevented competition. This kind of anti-competitive conduct should not be allowed. The reason at the time was that the formalities of some property transactions were very simple, while others were very complicated. For instance, a second-hand flat is sold by an elderly owner at a very low price. Since the flat has been resold many times, the land search process is very complicated. As a result, the legal fees might be very high. But for some first-hand flats, the land search process is simpler, so the solicitors do not have to do additional work.

Actually, all the so-called scale fees are set by the Costs Committee under Chapter 159 of the laws of Hong Kong. The Court set up such a committee in view of public interest. However, why did the scale fees arouse such strong objection later on? Chairman, we need not go into the details, but the main

reason was that when property prices were very high, the Government did not adjust the scale fees. Naturally, this would have strong repercussions among the public.

Nevertheless, the scale fees for conveyancing now exist in name only. But our Costs Committee still ..... Mr Albert HO may be more familiar with this than I. There are still scale fees for probate work. How can we say that this does not contravene the first conduct rule? At present, the Costs Committee is listed as No. 109 on the papers submitted to us by the Government, which means that it is not engaged in any economic activity. The Government intends to exempt the Costs Committee in this manner. Is this the best way? Is it a good idea to exempt it so that it can set the scale fees? Chairman, it is really not a good idea. Does it mean that without exemption, it cannot set scale fees for probate work? The fees for probate work are not high, but why do we need scale fees? This way, when ordinary citizens need probate services, they will not have to guess what the value of their estate is and the amount of the fees they have to pay. With scale fees, they would know how high a fee they have to pay in advance. This would set the people's minds at ease and is consistent with public interest.

Therefore, Chairman, whether it is the scale fees for the conveyancing of property or probate or other legal fees, what can be done if we want exemption in case Mr Ronny TONG's amendment is passed? First, as we have seen earlier, several provisions in the law would still allow us to be given exemption. According to clause 15 of the Bill, the Competition Commission may issue a block exemption order in respect of a particular category of agreement. But this is not the one that I mean.

Clauses 31 and 32 of the Bill state that the Chief Executive in Council may give some exemptions. He may do so for reasons of public policy, as stated in clause 31. According to clause 32, he may also exempt some agreements in order to comply with an international obligation. Chairman, if any scale fees are not in contravention with the law, they should satisfy the criteria for exemption under this legislation. The Chief Executive in Council will have to provide arguments in terms of public policy to substantiate such exemption. I believe the scale fees for probate work are entirely consistent with the interests of the public. However, if you do not believe me, you should look at the procedures,

rather than say that I represent the legal sector and hence I have to look after its interests.

Once the Chief Executive in Council makes this policy, we have to look at clause 33, since the Chief Executive gives the exemption by arranging for an order to be published in the Gazette. Chairman, there is no need for me to read out clause 33 in full. The order is to be published in the Gazette and passed by resolution at the Legislative Council. Members will then be able to deal with it as they deal with subsidiary legislation. If you think that the Government favours any particular party, or a certain agreement should not be exempted, or an agreement is not consistent with public policy and you object to it, even though you support the work of that particular body, you can oppose it. That way, the exemption by the Chief Executive will have no effect. However, if you think it is consistent with public interest, as in the example given by Mr Frederick FUNG, you can discuss it in Legislative Council.

Chairman, this is not just a broad direction, principle or general idea. The provisions tell you very clearly what you have to do. They tell you that as representatives of the people, you should deal with it on a political and policy level. Chairman, if we had followed these principles in handling the scale fees years ago, it would not produce such a peculiar situation, in which the interests of the legal sector were set against those of the public. The legal sector would say that this is what they recommend and it is beneficial to the public, and ask if everyone agrees. If so, it would become a public policy.

Chairman, I think the legal profession understands and accepts that everyone is equal before the law. At the same time, if certain scale fees should exist and are announced by the Costs Committee for the public good or because they are consistent with public policy, they can certainly do so. This is a better way than exempting a body from the law.

Therefore, Chairman, I hope that Members will not just look at whether this is in the interest of the sector I care about, or whether exempting them is the best solution. Rather, we have to consider how to legislate with prudence. In time, the people of the Hong Kong Special Administrative Region will understand some fundamental principles of fairness. Actually, in the long run, it will also help us not to be afraid of the rules we make in enacting legislation.



We are the legislature. We should be increasingly clear about what kind of legislation we should enact and what principles to adhere to in enacting it.

Thank you, Chairman.

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

**MR ALBERT CHAN** (in Cantonese): Chairman, earlier, someone said that we would be holding meetings day and night and night and day. Actually, they have been no-shows day and night and night and day. That is why I request a headcount, Chairman.

**CHAIRMAN** (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber?

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

**CHAIRMAN** (in Cantonese): Mr Albert CHAN, do you wish to speak? This is the fifth time you speak.

**MR ALBERT CHAN** (in Cantonese): Chairman, I think I need to clarify several things. First, Mr Frederick FUNG said that Mr WONG Yuk-man and I had referred to the MTRCL several times as a statutory body during the debate over these two days. I already clarified this matter yesterday. After checking the facts, we understand that the MTRCL is no longer a statutory body, although it used to be one. Nevertheless, I also pointed out that according to the Mass Transit Railway Ordinance, there is an agreement between the Government and the MTRCL which states that the MTRCL will operate under prudent commercial principles. That is why we pointed out that according to clauses 15 and 31 of the Bill, the Government may exempt the MTRCL from the competition law due to this kind of agreement. We express concern and our objection to this.

Regarding other statutory bodies, of course I understand that statutory bodies like the Urban Renewal Authority (URA) and the Airport Authority Hong Kong (AA) have to perform some essential activities. However, if their activities and the services they provide are entirely exempted and we have no choice, it would contravene the competition law. Not all services provided by the URA or AA are essential and basic public services. For instance, the Government has allocated all lands at Chap Lap Kok to the AA. The AA can use the land for constructing hotels and a convention and exhibition centre, as well as providing diverse services such as logistics. If the relevant activities of the AA are economic and lucrative, with nothing to do with public service, and the AA is controlling the market through its special position and legal status, we do not think it should be exempted.

People Power has been through a lot of inner struggle lately. As Mr WONG Yuk-man and I have pointed out repeatedly in our speeches, I absolutely agree with the ideas and principles behind the amendment proposed by Mr Ronny Tong to a certain extent, and we cannot accept the blanket exemption of statutory bodies by the Government. As I said earlier, the activities can be very wide-ranging. Under the existing law, the MTRCL is not a statutory body. But through agreements, some of which involve the properties of the KCRC ..... The KCRC is still a statutory body. So it involves a lot of complicated issues.

Of course, I very much appreciate the analysis and comments made by Dr Margaret NG in her speech yesterday and today. I understand the spirit and principles perfectly, and support what she has said. However, People Power is still troubled. There are many statutory bodies, and the services provided by quite a number of statutory bodies may be partly economic in nature, but these services may also be essential. Simply put, the services provided by certain statutory bodies, such as the Legal Aid Services Council, the Employees Retraining Board, the Estate Agents Authority, the Board of Management of the Chinese Permanent Cemeteries and the Mandatory Provident Fund Schemes Authority are partly economic in nature. However, these services are closely related to the daily lives of Hong Kong people. According to the Government's present proposal, these statutory bodies should all be exempted, while Mr Ronny TONG proposed that none of them should be exempted.

Certainly, other parts of the Bill also provide for some regulation. Not all these activities will be regulated, but there are now many grey areas and

questions. In the explanations given by Dr Margaret NG and Mr Ronny TONG, they mentioned clauses 15 and 31. I already explained yesterday and will not repeat again, Chairman, lest someone would accuse us of filibustering. However, I wish to point out that clauses 15 and 31 still cannot allay our misgivings. I forget whether it is Mr Ronny TONG or Dr Margaret NG who mentioned Schedule 1 in their explanations. However, even Schedule 1 cannot quell our misgivings. If they are all exempted ..... Is it Schedule 1? Schedule 1 has nothing to do with it. I do not know if this is true, maybe you can explain later, because .....

(Mr Ronny TONG stood up)

**CHAIRMAN** (in Cantonese): Mr Ronny TONG, what is your point?

**MR ALBERT CHAN** (in Cantonese): ..... I am looking at Schedule 1, the conduct rules .....

**CHAIRMAN** (in Cantonese): Mr CHAN, please hold on.

**MR ALBERT CHAN** (in Cantonese): Chairman, I am willing to let Mr Ronny TONG explain first.

**CHAIRMAN** (in Cantonese): Mr Ronny TONG, what is your point?

**MR RONNY TONG** (in Cantonese): I never mentioned Schedule 1. It is Schedule 7 that I have been talking about.

**CHAIRMAN** (in Cantonese): Mr TONG, you may speak and respond again later on. Mr Albert CHAN, please continue with your speech.

**MR ALBERT CHAN** (in Cantonese): Yes, Chairman. I am going deaf and blind. Maybe I am the victim of political persecution like LI Wangyang, and I am starting to have these problems. This morning, I complained to the Secretariat about the glare of those lights. It is like torture and I feel a bit dizzy. Chairman, I will go through the clauses of Schedule 7 again later. Actually, Schedule 1 has to do with exemption too, that is, general exclusions from conduct rules. I have looked at Schedule 1, but my worries are still not dispelled. Can Schedule 7 dispel them? I will look at it again carefully later.

Chairman, People Power has expressed our stand repeatedly over these two days. On the one hand, we cannot accept the blanket exemptions proposed by the Government. But on the other hand, we find it hard to believe that if none of the statutory bodies is exempted, the existing public support or services that the people urgently need will not be affected. We are worried that if the statutory bodies are not exempted, some organizations with economic or business interests will invoke the law and take legal action, thus harming the interests of the people.

We wish to point out again that the whole legislation is ill-conceived and immature. This immaturity weakens the regulatory power of the legislation. The various exemptions from the conduct rules, especially the exemption of certain services by the Chief Executive in Council, and the issue of exemption orders in respect of certain categories of agreement by the Competition Commission, will greatly reduce the effectiveness and application of the law upon its implementation. Based on my remarks just now, we will not oppose the amendment proposed by Mr Ronny TONG. However, we cannot support it either due to our misgivings.

**MS CYD HO** (in Cantonese): Chairman, I am speaking in support of Mr Ronny TONG's amendment. I will use one concrete example to explain why I support it. The example I want to use is the role played by the Trade Development Council (TDC) in organizing the book fair, promoting the publishing industry and fostering the reading and writing culture.

Chairman, some statutory bodies have certain social functions. The TDC is an organization with a very long history. I remember there was a subject called Public Affairs at the Secondary School Certificate Examination, and the TDC was mentioned in the textbooks. For the sake of developing trade and

promoting Hong Kong's business overseas, we certainly need the existence of these statutory bodies in Hong Kong. However, nowadays, in different sectors, are these bodies beginning to engage in some sort of competition with the private sector? Maybe because of the lack of domestic competition — as there is no competition in terms of exhibition activities or the promotion of industries, the TDC has not strived to constantly improve itself. Thus, we will lose out to China or other overseas competitors. This is detrimental to our economic development.

The Hong Kong Book Fair is now in its 23rd year. It has quite a long history and is now a big event — especially for young people. Each year, it has a considerable number of visitors. Last year, it was attended by 947 000 visitors. The number of participating publishers is also quite large, with 526 exhibitors from 24 countries. However, apart from the number of visitors and providing a venue for the local publishing industry to "move" their books and goods, this industry has seen very little development in other areas.

I have some Mainland figures. The Mainland has been more open in the past decade. The national publishing industry has grown by 50%. In Shenzhen, the publishing industry is worth RMB 34.8 billion yuan. In Shanghai, it amounts to RMB 100 billion yuan and in Hubei, it also amounts to tens of billions of yuan. But if we look at Hong Kong, the TDC website points out that Hong Kong is an important publishing centre in Asia, since we have freedom of expression. Hence, we are a centre for the publishing industry. But what about our figures? In 2011, it was worth \$13.6 billion, with a growth rate of only 8.4%. While 60% of our exports are to Mainland China, the Mainland industry has grown by 50%, while our industry has only grown by 8.4%. In terms of the number of persons engaged, there are around 37 000 in the whole publishing and printing industry, including those engaged in printing, typesetting and colour separation. This accounts for less than 1.5% of our labour force. Is it because of the lack of domestic competition that it cannot develop further? Compared with Mainland cities, we are really taking their dust.

I have talked to some members of the industry (members of the cultural sector). Actually, there was a plan five years ago to urge Donald TSANG's Government to develop Hong Kong into a centre for promoting the publication of new books, so that Chinese writers would feel that they enjoy a certain status in launching their new books in Hong Kong, just like staging musicals at Broadway

and showing fashion in Paris and Milan. The aim was for Hong Kong to become a place for people to win recognition in the publishing industry and in writing.

However, unfortunately, not only does the Government have no vision about the cultural and creative industries in general, the TDC Book Fair has no ambition beyond boosting the number of visitors, even though it dominates the exhibition market of the whole publishing industry. This is a major reason why we lag behind others.

Are there other book fairs organized by other people in Hong Kong? There are, but the organizers are very small cultural groups, and the book fair can only be held at the Cattle Depot or community halls in Causeway Bay. Only the TDC can organize such a comprehensive and large-scale annual book fair. Even so, it only manages to break even. Each year, the Book Fair generates a profit of \$33 million. In this respect, the TDC has not let us down. But in terms of the development of the industry, it does not do very well. Moreover, it fails to do a good job in promoting cultural events and the reading culture.

Apart from selling books, the Book Fair also features some cultural events, such as meeting the writers. Louis CHA was invited in the past, which naturally caused a sensation and drew large crowds. The Mainland poet Bei Dao and Han Han had also been invited to Hong Kong. Last year, the writer in focus was Ms Xi Xi. However, it was only attended by 130 000 people. In terms of the further development of the industry, we do not see how Hong Kong can foster the reading culture of the public, much less encourage people to develop their writing talents. Unfortunately, the types of books being moved in the Book Fair are mainly books on nutritious soup, cookery, medicine or other practical books. There are fewer books on more serious subject matters, such as in-depth books about policies, literature, history and philosophy, and their sales are poor.

I believe many colleagues here have published books before. I guess the best-selling books must be those written by Mr WONG Yuk-man. But as we all know, the number of books sold will not be more than five digits. With so much public money as its funding, the TDC has still failed to do a good job in promoting the publishing industry in 23 years. Maybe we should consider whether there is no improvement because of a lack of competition. Even if we want to provide public funding, should we not fund other organizations that have

more ideas about the cultural and creative industries and different groups so that these organizations and groups can flourish together?

Chairman, I want to use another example to illustrate how these bodies funded with public money compete with the private sector. The issue is brought up by the business sector. It is not Legislative Council Members who want to prohibit this. Some higher education institutions are developing some side businesses, at first on a trial run basis. For instance, the Optometry Clinic at Polytechnic University provides services such as optical dispensing service, eye examination and eye care. In the beginning, since this profession was not well recognized by the community, they set up the clinic so that students can receive training in a professional manner. They promote the professional services in the community by serving the public, and teach people about eye care. I totally agree that one should fund a profession or industry with public money at the beginning of its development. However, today, the optometry profession and the optical dispensing industry both regard the Optometry Clinic as competing with the private sector and demand that the Clinic at PolyU should exit from the market.

Today and yesterday, some Members wondered whether we should give blanket exemption, or remove the exemptions altogether. Should we adopt the approach of "exempting first and withdrawing later"? I agree with this. But if we agree with "exempting first and withdrawing later", we must look at each organization and even each of its activities individually, in order to decide at which stage the exemption should be given. Once the organization has developed to a mature stage and the profession or industry being supported is widely recognized by the community, and the organization is in a position to compete, it should exit the market and should no longer enjoy the exemption from the regulation of the Competition Bill.

Chairman, that is why I very much agree with the arguments put forward by Mr Ronny TONG and Dr Margaret NG. We should look at each organization and the scope of its activities individually in future, and consider how mature it is and whether it is competing with the private sector. If so, it should be subject to regulation by the Ordinance. Otherwise, not only do many statutory bodies enjoy a huge market advantage due to public funding, they also have statutory powers. For instance, you cannot refuse to sell your flats to the Urban Renewal Authority that we have been talking about. After being given

exemptions, these organizations will become monopolies and even engage in economic activities that would harm people's interests. This is totally unacceptable. Chairman, that is why I speak in support of Mr Ronny TONG's amendment.

As for the sunset clause proposed by Mr Albert HO, this is an amendment that we unfortunately have had to propose very often in recent years. Since we know we may not have enough votes, we have to settle for second best. If the Government has enough votes, we let the Government have its way first. However, we will introduce a special sunset clause. Even though this sunset clause will probably not be passed, we want to introduce it and put the deadline on record, to remind people that even though the Bill manages to be passed with enough votes today, a comprehensive review should be conducted before the deadline on the implementation of the legislation that we oppose and the Government supports today. I hope the shortcomings that we foresee today will be revealed by that time, so that the Government will face the facts and consider the views that we express today.

Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Mrs Regina IP, this is the second time you speak.

**MRS REGINA IP** (in Cantonese): Chairman, I speak to point out that apart from supporting my own amendment, I will also support the amendments of Mr Ronny TONG and Mr Albert HO when we vote later.

As some of our colleagues have pointed out during the debate just now, our amendments are technically not really perfect. Certainly, given such limited time, money and manpower resources, it is very difficult to put forward technically perfect amendments. However, there is a consistent principle behind, and that is if the Government seeks to promote fair competition by pushing through the Competition Bill (the Bill) so vigorously, there is no reason why all statutory bodies should be exempted, particularly when many of them, which have been receiving government subsidies for a few decades, have already become large enterprises and posed serious competition threat to their counterparts in the private sector. Therefore, although the Secretary had left the



Chamber when I began my speech, I still hope that he will refrain from using such bureaucratic words as "inappropriate" and "unnecessary" when he delivers his speech. Why is it unnecessary and inappropriate? One should not be as rigid as that, and an explanation must be given, now that we have already put forward so many justifications. No matter what, it has to be put on record, and I have to state why I find this issue of principle so important.

Chairman, many Honourable colleagues talked about the Trade Development Council (TDC) last night. Why is the TDC mentioned so often in the discussion? First if all, I would like to state that I know many TDC council members and senior executives very well, and I only had personal friendships but not personal conflicts with them in the past. I always mentioned them not out of any personal feelings but only with reference to the Bill. The TDC was established in 1966, with the statutory functions of promoting the trade of Hong Kong, particularly the export trade, including promoting our books or publishing industry and assisting publishers in their export business, as mentioned by Ms Cyd HO. Secondly, the TDC also has to give recommendations to the Government on how to improve the trade of Hong Kong. In other words, the TDC provides services not only to itself but also to the trading sector as a whole.

Yesterday, some Honourable colleagues talked about how outstanding TDC's achievements were. Nobody would query that at all, and its achievements were much acknowledged and commended. However, some other people mentioned that as the TDC was a pioneer, it had to run many businesses at a loss because no one would take up such businesses. If this was the case, why should it be afraid? If there were no competitors and there was no one to compete with it, and it was running these businesses only because no one would do so, there would be no question of contravening the conditions in the Bill. Or when one says that the TDC was so selfless that it paid small and medium enterprises (SMEs) to run their businesses in times of economic downturn, one should not forget that the TDC paid its own customers in order to get business for itself. Certainly, I also mentioned this point to the relevant officials, and that is, the competitors of the TDC would think that the TDC is paying its customers and subsidizing them after the financial turmoil in order to get business for itself. Consequently, its competitors' business will be affected. This is how the competitors see the acts of TDC. If the TDC really performed its statutory function by granting subsidies to all SMEs, disregarding who these SMEs would patronize, then it was really promoting the trade of Hong Kong.

There is nothing wrong with having ulterior motives, but the fact is that after four decades, the TDC has now become a large enterprise and posed a significant competitive threat to the private sector. Under this circumstance, when the Government promotes fair competition in such a high-profile manner, there is no reason why it should grant blanket exemptions to bodies established by itself. This will either give an impression of favoritism or convey a sense of feebleness. I really hope Secretary Gregory SO will right this wrong. If the Bill, including these unfair provisions, is forced through this time, I hope the Secretary will think about these questions: What role will he play in the history of Hong Kong? How will members of the sector think of him? Apart from bodies established by him, what will enterprises which are not so closely related to him think of him? If the Bill is really passed with these inadequacies, I hope he will right this wrong at an early time if he continues to take up this post in the next term of Government, so as to give Hong Kong a genuine level playing field.

Certainly, I also heard some Honourable colleagues ask why, instead of helping the TDC, we should help private enterprises, especially those foreign enterprises which only come to Hong Kong for making money and will leave when business is bad. This is bound to be the case. Everyone comes here to make money. When investment banks close down, their offices which take up more than 10 office floors will be left vacant. Does it mean we should not welcome them? The question is the TDC is subsidized by the Government, and it has been receiving government subsidies even up till now. Regarding its current achievements, while its executives and leaders have certainly made very great efforts, the land and funds granted by the Government are also very important. Even when the economy is poor and private contractors withdraw from the market, the Government still increases its subsidies so that the TDC can still be able to perform its statutory functions.

Let us take other statutory bodies as further examples. Just now, many Honourable colleagues mentioned many other organizations, and the MTR Corporation Limited (MTRCL) is an often-mentioned one. When it comes to the MTRCL, apart from me, a few other Honourable colleagues in the Chamber are also not sure whether it is a statutory body because it is governed by an ordinance. However, I believe Mr Ronny TONG and Mr Andrew LEUNG are right in saying that it is not a statutory body. If the Bill is passed in such a way as suggested by the Secretary, the MTRCL should not be granted exemption,

right? The Secretary may confirm this point in a moment. However, why did so many people mention the MTRCL? Because a phenomenon has emerged: the MTRCL is highly subsidized by the Government to engage in economic activities, and its economic activities have significant competitive power among private enterprises. Under such circumstances, it is unfair to grant exemption to MTRCL. Certainly, I hope the Secretary will confirm that it will not be granted exemption.

As for my amendment, some Honourable colleagues think that it is far from being perfect because it does not provide for any mechanism to enable the Government to include all statutory bodies in the scope of exemption. Actually, such a mechanism is available because, according to my amendment, all statutory bodies are included. After the relevant legislation has come into effect, if someone lodges a complaint regarding the Urban Renewal Authority (URA) right away, its "parents", either the Development Bureau or the Transport and Housing Bureau, will voice out and put forward a recommendation to the Chief Executive in Council to ask for exemption, pointing out that the relevant activities do not affect the market. Actually, such a mechanism is in place.

Chairman, I wish to state clearly that I know amendments proposed by Members can hardly be passed, but I hope that the public will be able to listen to Members' speeches on the issue of principle today, and such exposition will be put on record. I also hope the Secretary will reconsider the matter. On the one hand, he tries to promote fair competition, but on the other, he grants exemption to public bodies which pose competition to their counterparts. It is unjust, and I hope it can be rectified as soon as possible. Thank you, Chairman.

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

**MR WONG YUK-MAN** (in Cantonese): Chairman, just now I mentioned clause 5(2) of the Bill. Mr Ronny TONG's response was ..... he already provided additional information, saying that the relevant issue is dealt with by other provisions in the Bill, such as clauses 15, 31 and 32. However, the mechanism provided for in clauses 3 to 5 is actually not exactly the same as that provided for in clauses 15, 31 and 32.

First, the considerations listed in clause 5(2) are not identical with those under clauses 15, 31 and 32, and the targets of clauses 3 to 5 are different from those of clauses 15, 31 and 32. Clause 15 is a block exemption provision, clause 31 is specifically on exemptions on public policy grounds, and clause 32 is specifically on exemptions to avoid conflict with international obligations. The targets of these clauses are different from those of clause 5(2). The mode of exemption and the organizations to be exempted under clause 5 are different from those under clauses 15, 31 and 32. While clause 5 involves the decision made by the Chief Executive in Council, clause 15 concerns the block exemption order issued by the Competition Commission (the Commission), which does not require the passage by the Legislative Council; clause 31 is on exemptions granted on public policy grounds, which are granted by order issued by the Chief Executive in Council; and clause 32 is specifically on exemptions to avoid conflict with international obligations, which are also granted by order issued by the Chief Executive in Council. Therefore, the Legislative Council does not have any part to play in the regulation under clauses 15, 31 and 32 — at least under clause 15. With what I have said just now, I have briefly responded to Mr Ronny TONG's elaboration.

Besides, Dr Margaret NG and Ms Audrey EU also mentioned the principle behind clause 5(2) in their speeches this morning. However, the amendments of Mr Albert HO and Mr Ronny TONG have somewhat confused us. According to the amendments of Mr Albert HO and Mr Ronny TONG, clause 5 will be deleted; while in Mrs Regina IP's amendment, the principle behind clause 5(2) will be maintained but stipulated in clause 3(4) instead. On the other hand, while Mr Ronny TONG disagrees to the principle behind clause 5(2), Dr Margaret NG and Ms Audrey EU think that the relevant considerations should be taken into account in deciding whether or not exemptions should be granted. In that case, does the Civil Party think that the principle behind clause 5(2) should be maintained? If they think so, why does the Civil Party not support Mrs Regina IP's amendment? How can Mr Ronny TONG's amendment enable the implementation of the principle behind clause 5(2)?

Ms Audrey EU mentioned the competition law enacted by Singapore, pointing out that the Singapore Government has failed to honour its pledge to review the legislation. She thinks that the sunset provision proposed by Mr Albert HO will be able to compel the Government to conduct a review in three years' time. In that case, why is a requirement on statutory review not included?

My third point in response to their argument is that in the course of scrutinizing the Bill by the Bills Committee, Members humbly requested the Government to undertake to conduct a review on the implementation of the Competition Ordinance on a definite date — would the Secretary please listen to this carefully — so that the Legislative Council would be able to monitor the implementation and operation of the Competition Ordinance.

To win the support of Members, the Government definitely agreed to conduct a review on the legislation in future. However, when we asked the Government to give a more specific undertaking, the Government of the Hong Kong Special Administrative Region (SAR) employed its usual tactic, that is, the coaxing and perfunctory tactic. Even though we asked for a more specific undertaking, the Government was unwilling to include in the Bill a provision on conducting a review, but only advising us verbally that a review would be conducted. As in the case of the Minimum Wage Ordinance, the Government said that a review would be conducted once every two years. Although we requested that a review be conducted annually, the Government said that conducting a review once every two years was only the minimum requirement, and the authorities would conduct a review annually. However, the Government conducted a review once every two years in the end. Similarly, the Government is unwilling to include in the Bill a review requirement, and neither is it willing to give a written undertaking to the Bills Committee. Will the Secretary's verbal undertaking be honoured? There is no way to tell. However, according to the Government's previous practice, it is quite unlikely that it will be honoured, and we have no idea when the Government will conduct a review. In that case, what is the use of this verbal undertaking?

We are also not sure about the scope of the review. There is no provision in the Bill requiring that a review be conducted, and the Government is unwilling to make a concrete undertaking. This will undermine the monitoring power of the Legislative Council, right? Ms Connie LAU, Chief Executive of the Consumer Council (CC), said that the CC hoped that the Government would review the Competition Ordinance once every five years. In conducting a comprehensive and serious review of a piece of legislation, time is required for data collection and analyses. This may take at least a few months to one year, and adequate data has to be accumulated. If the time of reference is too short, the review will become meaningless. Therefore, we do not object to the proposal of conducting a review once every five years.

However, as the Competition Ordinance is new to Hong Kong, it will have a great impact on the economy and different trades and industries of Hong Kong. We think that the first review should be conducted two years after the Competition Ordinance has come into operation. The legal framework of the Competition Ordinance will apply to all trades and industries, and it will definitely affect the livelihood of people of all sectors. We should not take it lightly indeed.

Chairman, it is no accident that the Government adopts such a practice and attitude. This is the way it is now, and this will also be the way it is in future. Buddy, as you will remain to be a Director of Bureau in the new-term Government, I have to tell you that Fanny LAW, Head of the Chief Executive-elect's Office, urged us every day at meetings of all committees ..... let me shake hands with "Long Hair" first. "You won the court case and do not have to go to jail for the time being. Although not being provided with toilet paper has nothing to do with you for the moment, you should fight for it." Fanny LAW, Head of the Chief Executive-elect's Office, urged us every day to pass the Bill first and then draw up the review arrangement later, right? The Government likes it this way, and it is the same for both the previous and the new-term Government. They share the same mentality. No wonder the Secretary will be able to stay in the new-term Government. Donald TSANG is like this, and LEUNG Chun-ying will be even more so.

Chairman, the following remark is addressed to you. If you are so fortunate as to win in the election in September and to be elected President of the Legislative Council afterwards, basically you can expect even greater tension between the executive and the legislature, unless the Government changes its previous practice of forcing its way through in every instance; or if "Long Hair", "Hulk" and I continue to run in the election, and if unfortunately, we fortunately win in the election again, then it will be unfortunate both for you and for us, not to mention the Government. I will continue .....

**CHAIRMAN** (in Cantonese): Mr WONG, please speak on the relevant clauses, schedules and amendments.

**MR WONG YUK-MAN** (in Cantonese): ..... we hope the Government will listen carefully to and address Members' aspirations. I earnestly hope that the Secretary will not think the meeting time is too long or does not mind having to sit here listening to us while there are not many people in the Chamber. I hope he will not just listen and do nothing about it, and I hope he will spend more time to give his response and make a concrete undertaking on the review arrangements of the legislation.

The Government once explained that the approach of granting exemption across the board is adopted in view of the large number of statutory bodies and the time required in the process. First, I would like the authorities to know that the controversy only involves those statutory bodies which are engaged in economic activities instead of all statutory bodies, and we do not object to granting exemption to statutory bodies which do not engage in economic activities or only have insignificant amount of economic activities; secondly, the date of operation of the Competition Ordinance has yet to be fixed, the Commission has not been established, and neither have the guidelines been laid down. When we still have no clear idea about when the Competition Ordinance will come into operation, how can the Government be so capable and smart as to be able to see into the future and foretell that there will be such excessive workload that the Commission will not be able to cope with? May I ask the Government why it is able to predict such a situation at this early stage? In enacting such an important legislation, the Government even adopted this simple mentality without comprehensive and detailed planning. If the Commission will have heavy workload at the initial stage, there is an easy solution, and that is the Government can put forward to the Legislative Council a request for additional short-term positions ..... that is, short-term manpower resources. If the Government has reasonable grounds, the Legislative Council will not object to it. Therefore, the Legislative Council is after all only a rubber stamp now, or most Members are only playing the role of the Government's voting team.

As it is said, "the devil is in the details", we have different views on some aspects of the amendments proposed by Mr Albert HO and Mr Ronny TONG. These views, after being debated thoroughly in the Chamber, should be able to serve as good reference and guidelines for the Government. Such guidelines do not have any legal effect. But why do we hold meetings here? Why do we scrutinize the Bill and go through these procedures? Besides, people like us are always said to be filibustering. Just when we speak a bit more, we will be

criticized for employing the tactic of filibustering, and the Chairman will watch us closely without blinking. Actually, if Members do not analyse these related provisions thoroughly and then put forward their views, the Bill will become sloppy and not comprehensive enough. This is very unfair to most people of Hong Kong, particularly small and medium enterprises, who will be subject to this legislation.

The situation now is very simple, and what is most important is that ..... the Secretary always told us that "the most important thing is to pass the Bill, and this legislation is desirable as it will regulate against anti-competitive activities, which must be regulated by way of legislation." Am I right in saying that? The Secretary is right with this, and this is a universally applicable truth. However, it also depends on what the authorities are offering us. If the authorities are giving us sugar-coated poison ..... this is certainly no poison .....

**CHAIRMAN** (in Cantonese): Mr WONG, you are repeating your argument and also digressed from the subject.

**MR WONG YUK-MAN** (in Cantonese): Chairman, I have not repeated my argument, and I am speaking only on the exemption of statutory bodies, which in the past ..... Chairman, I have to report to you that the Bills Committee received a lot of views, both at public hearings and from different sectors. I have a stack of submissions here. Although many of the views submitted by these organizations are brilliant and insightful, I do not want to repeat them. If I am to repeat myself, all I have to do is to pick out a few paragraphs and read them out, and it will already fill up the time, right?

I wish to tell Members that this Government is enticing us to pass the Bill at an early date. The Government said it is something "desirable", but as for the proposed amendments, even though many of them are based on the Bills Committee's views, as long as the views put forward, including Mrs Regina IP's views, are different from those of the authorities, the authorities will brush them away lightly. Therefore, I would like to further remind the Secretary to stay here and listen to Members' views, among which is a view mentioned by



Members in the past, and that is to give a concrete undertaking on the arrangements of the legislative review exercise.

Thank you, Chairman.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): Yesterday, I already expressed my views on clause 5. Certainly, the competition law is one of Donald TSANG's vanity projects, which can be said to be a pledge made by him during his office. It is highly probable that this law will be enacted today. Actually, different views have been expressed during the legislative process, and I will focus on the issue of statutory bodies.

When Members take a look at clause 5, entitled "Regulations", they will find that I analysed paragraphs (a), (b), (c) and (d) yesterday, and actually there is a problem in it. If the authorities really conducted a thorough consultation rather than just going through mere formality during the legislative process, I believe most Honourable colleagues of this Council would consider, given the large number of statutory bodies in Hong Kong, that it is desirable to conduct debates to find out the circumstances under which statutory bodies will fall into paragraphs (a), (b), (c) and (d). In other words, when the Chief Executive in Council may deal with the matter in accordance with clause 5, it means he can deal with it according to his own judgment.

Certainly, I understand the consideration of the Chief Executive or the Government, since there are so many statutory bodies, the authorities may not be able to cope if the Competition Bill (the Bill) is passed and this matter has to be dealt with all of a sudden, and therefore they do not want to arouse any debate on which statutory bodies should be exempted and which should not, thereby delaying the legislative process. I can understand this. However, the Bill, which is about to be passed, really fails to tell us clearly which legislative guidelines will be followed by the Chief Executive in Council. This is a very serious problem.

Assuming that the future Competition Ordinance will confer the relevant power on the Competition Commission (the Commission); and after the passage of the Bill, the Commission will lose some of its power, which will be exercised by other people; and after these people have exercised their power, basically under our current political system, political institutions empowered by the Basic Law, such as the Legislative Council or other mechanisms, cannot dispute the decision of the Chief Executive in Council on which statutory bodies should be granted exemption. This is highly undesirable.

Let me cite a very simple example. If we already have a table listing out the relevant statutory bodies that have to do with paragraphs (a), (b), (c) and (d), we may debate over it during the legislative process. If we have already debated over it here, in other words, when clause 5 is passed ..... or there is even no need to provide for clause 5 because there is already a list to enable people to know that certain statutory bodies will or will not be exempted based on certain principles. Therefore, I think if the Government really wants to address this concern, it should actually take supplementary actions after the legislation is enacted, such as elucidating, in the form of guidelines or subsidiary legislation, the content of paragraphs (a), (b), (c) and (d), which has been discussed by us for so long but has yet to be solved.

Chairman, in order not to waste Members' time, in fact the authorities should find out the application of market share, the first conduct rule and the second conduct rule in Hong Kong, or how it compares with overseas countries. Actually, it is not impossible. If we read the provision carefully, "(a) the statutory body is engaging in an economic activity in direct competition with another undertaking", what is meant by "direct competition"? It is possible .....

**CHAIRMAN** (in Cantonese): Mr LEUNG, you mentioned a table. As you know, the Government provided a list to the Bills Committee in February this year, and a Member also referred to it just now, pointing out that among the some 500 statutory bodies, the Government thinks that over 400 of them do not fall into subclause (1) as they do not engage in economic activities or only have insignificant amount of economic activities.

**MR LEUNG KWOK-HUNG** (in Cantonese): And so they will be granted exemption directly.

**CHAIRMAN** (in Cantonese): Yes. Besides, there are some other statutory bodies which engage in economic activities that are directly related to the provision of essential public services or the implementation of Government policy. This falls into the condition in paragraph (c). The Government has already provided such a list.

**MR LEUNG KWOK-HUNG** (in Cantonese): However, under clause 5(2) of the Bill, there are paragraphs (a), (b), (c) and (d), and the word "均" (meaning all) is used in clause 5(2).

**CHAIRMAN** (in Cantonese): If you read the provision carefully, you will find that as long as a statutory body does not fall into one of the conditions in paragraphs (a), (b), (c) and (d), it is eligible for exemption.

**MR LEUNG KWOK-HUNG** (in Cantonese): No.

**CHAIRMAN** (in Cantonese): It is ineligible for exemption only when it falls into all the four conditions at the same time.

**MR LEUNG KWOK-HUNG** (in Cantonese): Yes.

**CHAIRMAN** (in Cantonese): Anyway, I believe you are aware of the paper provided by the Government. Therefore, when you express your views, you may also use the information in that government paper.

**MR LEUNG KWOK-HUNG** (in Cantonese): I have not brought that government paper with me today because I went somewhere else before the

meeting. The crux of the matter is that if exemption will only be granted when a statutory body falls into all the four conditions in paragraphs (a), (b), (c) and (d), the problem is .....

**CHAIRMAN** (in Cantonese): No, exemption will not be granted only when a statutory body falls into all the four conditions.

**MR LEUNG KWOK-HUNG** (in Cantonese): Right, exemption will not be granted only when a statutory body falls into all the four conditions in paragraphs (a), (b), (c) and (d).

**CHAIRMAN** (in Cantonese): As long as a statutory body does not fall into one of the conditions, exemption will be granted.

**MR LEUNG KWOK-HUNG** (in Cantonese): ..... exemption will then be granted. Therefore, the exemption is too broad. This is what I mean. Even if I do not fall into one of the conditions, I may still ask for exemption. Such a provision gives the Chief Executive a very large net to herd the fish into the sea, as I have pointed out time and again, and then use another net which can hardly catch any fish to catch fish. This is the crux of the matter, and this is where our concern lies.

If the Chief Executive does not personally deal with this issue, as Members and the Chairman also understand, statutory bodies were established with the support of the Government which prescribed them as statutory bodies and finances their operation through the relevant legislation. Now, the Chief Executive is offering such a broad exemption, which will be granted when a statutory body does not fall into only one out of the four conditions. Do you think it is fair? Therefore, if we really have to do so, extensive consultation should be conducted, and apart from bodies to which exemptions can be granted in one go, the rest of the bodies should be left to the Commission. And that would do.

If the Commission is told by another institution right at the beginning that its power is limited, and there is an entity called "Chief Executive in Council" which can do this ..... Chairman, during the "debate between a pig and a wolf", that is, when there was even debate on who had proposed the use of tear gas, the two "prominent" figures accused each other before millions of television viewers, rendering the incident a "Rashomon" now.

In future, given the inadequacies in the design of this piece of legislation, first, as I said yesterday, the Chief Executive in Council will have to discharge a function which may be beyond its capability; and second, fairness, that is the grounds for granting exemption, cannot be revealed. When such a logic is applied in legislation, what do Members think .....

**CHAIRMAN** (in Cantonese): Please do not repeat your arguments anymore.

**MR LEUNG KWOK-HUNG** (in Cantonese): Therefore, what I am saying is that clauses 3, 4 and 5 are not really necessary. If this power is returned to the Commission, the Commission and the Competition Tribunal will have their own way of dealing with it, and certain appeal mechanism can be established. Therefore, I find it unreasonable for any Member to support clauses 3, 4 and 5, especially when many Honourable colleagues stressed in their discussion that the Commission's power should be enhanced in order to implement the competition law. So this argument is totally inconsistent with the principles of the Bill. Therefore, I think that the relevant parts in clauses 3, 4 and 5, that is, the Chief Executive in Council will have such a power, is not really necessary.

Thank you, Chairman.

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

**MR ABRAHAM SHEK**: Chairman, in determining whether a public policy is to be supported, not least with the Competition Bill that now undergoes heated discussion, a major consideration has to be given to its relevance to its objective and to whether state intervention does hamper the well-run free market

mechanism creating uncertainty and market instability. Against this backdrop, I am speaking against the Government's proposal on clauses 3 to 5, which provides for the exemption arrangements for statutory bodies, specified persons and persons engaged in specified activities.

Since the Bill's objective is "to enhance economic efficiency and the free flow of trade through promoting sustainable competition to bring benefits to both the business sector and consumers", the state's play, in other words, should be restricted to the extent that its intervention has to be kept to the minimum in the market. It is disheartening to have learnt, out of the 581 statutory bodies, only six of them were not excluded from the Bill, leaving 160 bodies engaged in economic activities behind the shield of "exemption" from the law.

Given that any "undertaking" that is the object in the Bill is defined as "any entity ..... engaged in economic activity, and includes a natural person engaged in economic activity", it theoretically covers both private and public bodies as long as they are running or being connected to business. The *prima facie* blanket exemption of statutory bodies for the sake of its name not only genetically runs contrary to the "undertaking" concept, an unfair impression is erupted that the private sector counterparts are discriminated because of the favouritism of the state with which the noble principle "equality before the law" is infringed.

Such an "opt-in" approach adopted by the Government that all statutory bodies are exempted from the application of the Bill unless the Government decides otherwise is against international practice as found in most common law jurisdictions, like in the United Kingdom and also, possibly, in the European Union, where a general and broad exemption in legislation has been omitted. In the FENIN case tried in the European Court of Justice, it was held that "the public bodies would be caught under the rules if they act as 'undertakings' and are undertaken for an 'economic purpose'".

In the Far East outpost in Hong Kong here, where the common law system has been established like in the United Kingdom, the outset is surprisingly different although our Government has claimed that the Bill has been drafted having considered the overseas examples. Where are they? The tale of such mockery sheds light on how our public bodies, such as the Housing Society, the Urban Renewal Authority, the Trade Development Council and the like, which

are in direct competition against the private sector in the same market, could be exempted. It is utterly unreasonable that they are exempted beyond the scope of the law with their form as "statutory bodies" but not their substance as "undertakings" no different from the private sector that is discriminated in this regard.

Even the arguments of the "opt-out" exclusion regime of the statutory bodies as argued by our Government are reconciled, although I hardly fall into the same line, I am confused that our Government has yet to explain to us the principles and criteria it has considered in not only arriving at how the unlucky six public bodies were not exempted, but also why an "opt out" mechanism was not considered against the "opt-in" one. In respect of the exempted 160 bodies engaged in economic activities, the public is owed a fair explanation as to the extent to which their functions could be "directly related to the provision of essential public services or the implementation of Government policy" for their place off the ambit of the law.

For the above reasons, whilst we agree on having exemptions for certain statutory bodies, a general blanket exemption involves risks of abuse as many statutory bodies are likely to fall within the current definition. Certainty as to which statutory bodies are covered is desirable so that the extent of the exemption is known. Rather than exempting all statutory bodies from the conduct rules, it would be preferable to have an agreed list of statutory bodies which are wholly or partly exempted from the conduct rules annexed to the Bill on the basis of the nature and substance of their economic activities.

Thank you, Chairman. I am voting against the Government's amendments to clauses 3 to 5.

**CHAIRMAN** (in Cantonese): Mr Frederick FUNG, this is the third time you speak.

**MR FREDERICK FUNG** (in Cantonese): Chairman, for me, this debate touches the most sensitive spot in my heart about the relationship between people's livelihood and business operation. As Members would know, I have not taken

part in the debate in many previous sessions, but this point under discussion now is really very important.

Chairman, the two most critical issues involved are as follows. First, is there any grey area between full exemption and no exemption? At present, the Government's proposal is basically full exemption, whereas Mr Ronny TONG's proposal is no exemption. The third one is a grey area. As I just said, if a grey area is to be allowed such that each matter must be raised for protracted discussion as to whether it is lawful or whether it competes with the private sector for profits, and as there is a need to enact the competition law expeditiously, this scrutiny process cannot take place, and as a result, either full exemption or no exemption should be granted. From my point of view, for the purposes of achieving effectiveness, preventing any person from making use of the legislation to engage in time-consuming arguments, and avoiding direct impact on the large number of statutory bodies relating to people's livelihood, granting full exemption is the quickest approach with the least impact on the *status quo*. Hence, I support the Government's proposal and oppose the three amendments under discussion now.

The second issue is that under this circumstance, are there really no other options to deal with those situations where the statutory bodies have engaged in economic activities, but such activities are not related to people's livelihood? More importantly, I want to suggest an option for the Government to consider because firstly, it is very difficult to define undertakings, and secondly, even though only some 100 statutory bodies are engaged in economic activities, I think the *status quo* should be maintained if they are related to people's livelihood. I will not repeat the examples cited previously, including the Hong Kong Housing Authority, the Hospital Authority, and so on. How can the situation be dealt with? In fact, the Government has already given us an example. But I will refute this example later, that is, the MTR Corporation Limited (MTRCL).

Originally the MTRCL is a statutory body, is now it is a listed company subject to the regulation of the competition law. That is the third alternative on top of the black-and-white options we referred to just now in our protracted debate. Why do I oppose this third option mentioned just now? It is because while this approach is an alternative, I oppose the listing of the MTRCL. As the MTRCL is entirely related to people's livelihood, it should not be subject to



regulation by the competition law; otherwise, it cannot adopt certain policies to defeat or affect other similar corporations.

For instance, the Hong Kong Association for Democracy and People's Livelihood and I have all along suggested that if the MTRCL was a statutory body, or even a government-run corporation, its fare level could be affected. It must maintain operation even if operating at a loss. If a business continues operation even if operating at a loss, it may constitute a breach against the competition law because this can be a monopolistic tactic to strike out other competitors first in order to increase fare subsequently. It would be feasible if the MTRCL is directly owned by the Government. If it is a private company subject to regulation by the competition law, this cannot be done. This viewpoint that I just raised is of course diametrically different from the policy impact analysis made by Members such as "Yuk-man" yesterday.

At a time when Hong Kong people's livelihood is affected by high public transport fare, if the MTRCL — assuming that it was a statutory body or even a government-run corporation — should reduce fare, it would have no fear for the competition law; and this is what I said at the outset about allowing an ambulance providing public service to jump the red light, as proposed by Mr Ronny TONG. If the MTRCL charges a lower fare, can buses, mini-buses and taxis still charge a high fare? If the MTRCL is regulated by the competition law, it cannot do so; it can only do so if it is not subject to regulation by the competition law. Therefore, the MTRCL must be a statutory body or a government-owned corporation, as its business is directly and closely related to people's livelihood. That is the third alternative deriving from the two options.

Notwithstanding, I oppose the proposal to turn the MTRCL from a listed company to a private company. Assuming that this is an alternative, say, for instance, the Trade Development Council (TDC) mentioned by a lot of Members just now, is it competing with the private sector for profits? If after assessment, we find that the TDC is engaged in many commercial activities which compete with the private sector for profits and undermine the scope of development for the private sector, while its impact and blow on people's livelihood (I do not know if the Government will include another condition that Mr Frederick FUNG would be more concerned about people's livelihood, while the Government would be concerned about the economy at the same time) and our economy is relatively insubstantial, does it mean that the TDC should also become a listed company?

Once it becomes a listed company, there is no question about having exemption or not.

Which is the second organization to be considered? I think if I illustrate my point with examples of specific organizations, our debate would be easier so that we know clearly what our underlying values are. For me, this is not merely a discussion on the competition law, but also a discussion on values. The other organization I want to discuss is the Hong Kong Airport Authority (AA). Of course, the AA would impact on the economy, but it all depends on the Government's assessment as to whether the economy should be directly governed by the Government or a statutory body. If the economic concentration level of an undertaking is as high as over 80% and 90%, should it then become a listed company, similar to the present case of the MTRCL? In that case, there is no need for any argument. Moreover, it may even help avoid the possibility of lawsuits arising from changes made by the Government, and the need to ask the Court to define and determine whether it is an undertaking.

Chairman, I state this view because I want to tell the Government that I still agree that the Bill should be enacted as soon as possible. Regarding the many loopholes therein, unless Members consider that legislation should not be enacted if there are loopholes, but in fact, we all know that loopholes are found in each and every law, and the only difference is the number, if there are many loopholes, an amendment bill should be presented to the Council as soon as possible to plug the loopholes, and obvious loopholes must be plugged as soon as possible. However, to this date, I still maintain that the competition law should be enacted as soon as possible. I hope the Government can consider the views Members discussed and argued about just now, or even the alternative option I have just presented, that is, the approach to deal with the problem.

Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Mr WONG Yuk-man, this is the fifth time you speak.

**MR WONG YUK-MAN** (in Cantonese): Chairman, what I want to say this time is that I have high hopes for the Secretary, and as the enactment of this legislation

is led by the Secretary, I must also talk about his proposed amendments. To put it positively, Secretary, regarding the proposed amendments to Schedule 7 to the Bill about mergers, that is, mergers of carrier licences issued under the Telecommunications Ordinance, some of the amendments concerned are worth mentioning.

Regarding the Secretary's proposed amendment to substitute the expression "自動" (automatic) with "自主" (autonomous) in the Chinese text of section 3(4) of Schedule 7, I think the textual meaning of the expression "自主" is more appropriate. If we consider the word "autonomous" used in the original English text, the use of "自動" is indeed not suitable. Therefore, I support this amendment.

Without the proposed amendment to section 3(4), the original provision which reads as follows, "執行自動經濟實體的所有職能" ("perform, on a lasting basis, all the functions of an autonomous economic entity"), is obscure in meaning. Therefore, the expression "自動經濟實體" (automatic economic entity) must be amended to "自主經濟實體" (autonomous economic entity).

In another amendment to the heading of section 6 of Schedule 7 which reads "斷定競爭是否被大幅減弱時須考慮的事宜" ("Matters to be considered in determining whether competition substantially lessened"), the word "須" (must) is substituted with "可" (may) (the word "to" is substituted with "that may" in the English text correspondingly). Compared the textual meaning of the words *per se*, "須" has the meaning of "must" while "可" means "may"; there is a difference in degree or principle. Hence, the substitution of "須" with "可" will extend the scope of discretion allowed when considering whether competition has been substantially lessened. Hence, this amendment is indeed an improvement and a genuine correction.

Nonetheless, we note that the wording used in the heading and the contents of section 6 is inconsistent as the expression "可考慮" ("may be taken into consideration") is used in the latter. I think the Administration's original intention is to use the word "可" (may). With this amendment, the word "須" in the heading is changed to "可" to achieve consistency throughout the provision. Therefore, the amendment to section 6 is acceptable.

In the proposed amendments to the Chinese text of section 10 of Schedule 7, the expression "下一屆會期" (next term) is substituted with "下一會期" (next session) to clarify the legislative intent. I think this amendment can allow a clearer understanding of section 10.

The proposed amendment to section 11(1)(a) is mainly related to the wording used in the English text, so as to achieve consistency in the interpretation of the Chinese and English texts. This is a technical amendment. Actually, there are many similar amendments. In the course of scrutiny, the Bills Committee was primarily concerned about the Chinese text of the Bill, and many a times, less attention would be paid to the English text. But it is very important to achieve consistency in the interpretation of the Chinese and English texts.

Chairman, that is why I had that interaction with you in the course of discussion on clauses 5(2)(a), (b), (c) and (d) of the Bill when you ordered me to stop speaking as I was speaking on paragraph (d). But, there are in fact inconsistencies between the Chinese and English texts. The purpose of this amendment to section 11(1)(a) is precisely to achieve consistency in the wording and interpretation between the Chinese and English texts.

The proposed amendment to section 12 is mainly intended to tie in with the advent of the Internet Age by requiring that certain notices would need to be published through the Internet or a similar electronic network. There are also similar amendments to clauses 14, 15(2A), 16, 20, 29, 34 and 35 in the main text of the Bill. Considering that this principle should also apply to other legislation, we hope the Administration can work proactively by reviewing other provisions against this principle so that similar amendments can be introduced to other legislation. Therefore, this amendment is appropriate. We can apply this arrangement to other relevant legislation. As such, hopefully, the Chairman will no longer say that I have digressed, right?

Regarding section 14 of Schedule 7, it is proposed that "採取任何行動" (take any action) in the Chinese text be substituted by "採取任何訴訟" (take any legal action). Considering the corresponding English text in the Bill which reads, "the Commission may not take any action under this Ordinance", the amended Chinese text has a clearer meaning because the word "action" in the English text has not specified the meaning of legal action, whereas "訴訟" clearly means legal action. Although the Chinese and English texts are slightly

different, the proposed amendment would help clarify the meaning of the provision. I will not only criticize the Secretary's faults, but I will also praise his achievements. Although it seems that this amendment is unrelated to the Secretary, I will also praise him as he is the Government's representative.

The Administration also proposes to amend section 15(2) to the effect that when giving notice about rescinding the decision referred to in section 14, the Competition Commission is no longer required to state the reasons considered for the rescission. I consider that there are problems with the proposal. Therefore, we oppose this amendment to section 15.

Regarding section 17(4), we consider that the arrangement to "consult the Legislative Council" when formulating the guidelines is far from adequate. We have already stated our stance in respect of the formulation of guidelines, and we support the amendment proposed by Mrs Regina IP. I consider that the guidelines should be scrutinized and approved by the Legislative Council. Therefore, we do not support this amendment.

Lastly, I would like to mention the amendment to section 17, namely subsection (5) be deleted and substituted with subsections (5)(a), (b) and (c), subsection (6), subsections (7)(a) and (b), and subsection (8). This amendment is acceptable for the reasons I have already stated previously. I will not repeat those in detail for fear that the Chairman may say again that I have repeated my viewpoints. Thank you, Chairman.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Mrs Regina IP, do you wish to speak again?

**MRS REGINA IP** (in Cantonese): Chairman, I will speak briefly because it is unlikely that amendments proposed by Members will be passed. Nonetheless, as a matter of principle, I hope the Secretary can give us an undertaking in his reply. If this fragmented and unfair competition law is enacted, he must

undertake to conduct a review as soon as possible so that public enterprises receiving government subsidies which compete with private enterprises would be subject to regulation at an early date.

**CHAIRMAN** (in Cantonese): Mr Albert HO, do you wish to speak again?

**MR ALBERT HO** (in Cantonese): Chairman, I would like to make a consolidated response. Having heard the speeches made by Honourable colleagues over the past few hours, I believe that one thing is clear. We all agree that public functions are served by some statutory bodies, and some activities of these organizations should at least be exempted for the sake of public interest. This point is clear. Our contention now is whether blanket exemption of statutory bodies in the form specified in clauses 3, 4 and 5 should be granted. It is as simple as that.

It is evident from Mr Ronny TONG's amendments that he considers that blanket exemption of statutory bodies should not be granted. He also points out clearly that exemption should in fact be granted through a mechanism. First, under clause 15, the Competition Commission (the Commission) can exempt a particular category of acts (that is, agreement). Of course, the Bill has provided for the exemption procedures which involve the publication of a notice and the setting of a period. Under the second mechanism, the Chief Executive in Council may also grant blanket exemption to a particular category of agreements, subject to a procedure of the making of subsidiary legislation.

Hence, Mr Ronny TONG proposed this amendment for he considers that clauses 3, 4 and 5 are unnecessary. Even if these provisions are deleted, it will not affect the operation of these organizations providing essential public services. In practice, exemption can be granted by the Government through these options. I totally agree with this view and hence, we should support Mr Ronny TONG's amendment.

Concerning policy principles, we stress that if the Government considers that certain organizations, or the organizations in their entirety, or certain activities should be exempted, the Government is duty-bound to grant exemption to individual organizations as warranted, and then seek the Legislative Council's

approval according to the legislative procedures. The Government should not grant blanket exemption to statutory bodies first and then exclude individual organizations which should not be exempted as exceptions. That is not the approach the Government should take.

Regarding clauses 3, 4 and 5 now proposed by the Government, we cannot accept the Government's public statement that the proposed arrangement is proper as there is another set of regulations to be made under the total discretion of the Chief Executive. There is another system to ensure that statutory bodies will not contravene the conduct rules unless there are justifiable causes. But what is meant by justifiable causes? There is no discussion or disclosure in this regard at all, and another system and another set of standards can easily be established. Given our demand for fair competition, how can we accept that there are different standards of fairness where some organizations are required to act in an absolutely fair manner and comply with our standards, while others can act in a not-so-fair manner? I think we should not accept such a model. Unless the reasons have been specified beforehand, I think we should not allow the Government to make another set of guidelines separately through administrative means. That is a breach of the principles of the rule of law, with a tendency towards the rule of man. Therefore, we consider that the approach specified in clause 5 is absolutely undesirable.

My proposed amendment to add clause 5A is very simple. It intends to give the Government some time, that is, a validity period of three years. We do not accept double standards. If the Government considers that exceptions are necessary, it should specify clearly which statutory bodies or which particular type of activities of the relevant statutory bodies should be granted exemption, as well as the degree and scope of exemption. This is the most desirable approach to adopt.

I only want to indicate our voting preference later on. We will support Mr Ronny TONG's amendments, and if they are vetoed, we will vote for the inclusion of the amended provisions proposed by the Government, and then I will move my amendment to include the sunset clause.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Chairman, the Government opposes the amendments proposed by Mr

Albert HO, Mr Ronny TONG and Mrs Regina IP respectively in relation to the provisions on exemption arrangement under the Competition Bill (the Bill).

Mr Albert HO's amendment proposes to add clause 5A to impose a three-year validity period for the provisions in relation to the exemption arrangement of statutory bodies (that is, clauses 3, 4 and 5). Mr Ronny TONG's amendment proposes to cancel the exemption arrangement of statutory bodies entirely. In other words, all statutory bodies are subject to the regulation of the Bill. As we consider the above amendments which seek to cancel the exemption arrangement inappropriate, we oppose the amendments proposed by the two Members.

As I have explained during the resumption of Second Reading debate of the Bill, the exemption arrangements for statutory bodies aim to ensure that the provision of public services and the implementation of public policies by statutory bodies would not be interrupted by the introduction of a competition law in Hong Kong. As a matter of fact, the majority of statutory bodies in Hong Kong does not engage in economic activities or is engaged in economic activities which have insignificant effect. For other statutory bodies engaging in economic activities, the economic activities concerned are directly related to the provision of an essential public service or the implementation of public policy. The proposed exemption arrangement for statutory bodies will help eliminate doubts and uncertainties and hence, ensure that the relevant statutory bodies can efficiently implement public policies as well as measures which are required to respond swiftly to various needs.

Unlike the case of other undertakings, the functions of statutory bodies as well as their services or activities are usually regulated by the ordinances by or under which the statutory bodies are established or constituted. It is a statutory duty for statutory bodies to operate in accordance with the requirements in the establishing ordinances. In addition, while exempted statutory bodies are not being subject to the competition rules in the Bill, they are still required to adhere to the competition principles underpinning the rules. Here, I would like to reiterate the Government's stance as follows: The Administration will ensure that exempted statutory bodies would not undertake anti-competitive activities unless there are justifiable causes. The Administration will continue to receive complaints against anti-competitive activities of exempted statutory bodies. Exempted statutory bodies found to have breached the competition rules would



be requested to rectify their anti-competitive behaviour. As a final resort, the Bill also confers the Chief Executive in Council with the power to make regulations under clause 5 to apply the competition rules and the enforcement provisions to certain statutory bodies. Regarding specified persons granted with exemption, the Administration can abolish any regulations made under the Bill in order to cancel the exemption granted to those specified persons. All regulations made under clause 5 of the Bill are subject to negative vetting by the Legislative Council.

Many Members have spoken about the role of the Hong Kong Trade Development Council (TDC) and its exemption. I would like to point out that the TDC has specific statutory functions and duties under the Hong Kong Trade Development Council Ordinance. One of the statutory functions of the TDC is to promote, assist and develop Hong Kong's trade with places outside Hong Kong, with particular reference to exports. Among the activities of the TDC, trade fairs have played a pivotal role in enabling the TDC to discharge its duties of export trade promotion. The TDC's trade fairs have greatly assisted small and medium enterprises (SMEs) in expanding their businesses in overseas markets, and more importantly, in consolidating Hong Kong's role as an international trade fair capital in the region. Many SMEs rely on the TDC's trade fairs as an affordable and efficient means as well as a reliable channel for promoting their products and services to overseas buyers. In fact, the TDC's trade fairs have all been organized in response to the demands of local industries or with a view to promoting government policies.

In making the decision to exempt the TDC, the Administration has taken into account the fact that the operation of the TDC differs from other private operators in the exhibition market. Unlike private exhibition organizers which operate for the purpose of maximizing their profits and might reduce their scale of operation during economic downturn, the TDC is tasked to promote Hong Kong's external trade regardless of the economic conditions. In times of economic hardship, the Government will request the TDC to do more in terms of trade promotion (including the organization of trade fairs), in order to provide the necessary support to SMEs and maintain Hong Kong's overall competitiveness. It is worth noting that not all the trade fairs organized by the TDC are in fact profitable but the TDC has nevertheless continued to organize these trade fairs for the greater benefit of local industries and SMEs and in order to support the Government's policies. Examples of these trade fairs are the "Hong Kong

International Wine & Spirit Fair", the "World Boutique, Hong Kong", and the "Entrepreneur Day".

The exemption for the TDC from the application of the Bill will help eliminate any uncertainties as to whether certain activities (such as organizing loss making trade fairs), which form part of the TDC's core statutory functions, might be alleged as anti-competitive, and thus ensure its uninterrupted support to local industries and SMEs.

Regarding the amendments proposed by Mrs Regina IP to clauses 3 and 5 in relation to the exemption arrangement, they intend to impose certain conditions for exemption such that statutory bodies will only be exempted if these conditions are fulfilled. Although Mrs Regina IP's amendments do not seek to remove the exemption arrangement of statutory bodies entirely, they impose an exceedingly high threshold for granting exemption to statutory bodies, which is practically the same as removing the entire exemption arrangement for statutory bodies in the Bill. For instance, in the first condition, she proposes that the statutory body should not be engaging in an economic activity in direct competition with another undertaking. But, in fact, for any statutory bodies engaging in economic activities, unless there is no other player in the market, they must have a competitive relationship with other players. If Mrs Regina IP's amendments to clauses 3 and 5 are passed, all statutory bodies engaging in economic activities (regardless of the scale of their economic activities, and whether they are related to public services or policies) will basically be regulated by the Competition Ordinance, including those which are involved in the provision of essential public services or the implementation of important public policies in different areas (such as education, healthcare, social welfare and public housing), like the Hospital Authority, the Hong Kong Housing Authority, as well as Direct Subsidy Scheme schools and caput schools. This will create a lot of uncertainties for the operation of these organizations which provide essential public services, so much so that they may have to suspend or delay the provision of these services due to possible legal challenges.

I note that many Members have spoken about the Mass Transit Railway Corporation Limited (MTRCL). I would like to reiterate that as the MTRCL is not a statutory body, it will not be exempted under clause 3 of the Bill.

In my earlier speeches, I have already stated clearly that the Government will review the scope of exemption for statutory bodies three years after the major prohibition clauses comes into operation. All in all, we consider that the Bill has struck a good balance between ensuring the effective operation of exempted bodies and maintaining the necessary checks and balance. If the amendments are passed, the normal operation of some statutory bodies will be affected directly, which is unacceptable to the Government. As such, I earnestly implore Members to oppose the proposed amendments of Mr Albert HO, Mr Ronny TONG and Mrs Regina IP, and support making clauses 3 and 5 stand part of the Bill. Thank you, Chairman.

**MR RONNY TONG** (in Cantonese): Chairman, just now, some Honourable colleagues including Mr WONG Yuk-man queried why I proposed to delete clause 5.

Chairman, as I have explained clearly yesterday, clauses 4 and 5 form part of the block exemption mechanism for statutory bodies provided under clause 3. Hence, when I delete the block exemption mechanism for statutory bodies, clauses 4 and 5 are meaningless on their own. As they should not exist in the Competition Bill (the Bill), they must be deleted. Regarding the question of whether statutory bodies can be exempted through other mechanisms under the Bill after this mechanism has been cancelled, as I have already stated my stance clearly just now and yesterday, I will not repeat again.

Nonetheless, when listening to the Secretary's speech just now, I find it strange to hear him challenging the criteria listed out by Mrs Regina IP in the new clause 3(4) for determining whether a statutory body should be exempted. The Secretary may have not noticed that Mrs Regina IP has merely copied the provisions in clause 5(2) of the Bill to clause 3, *viz* clause 3(4). When the Secretary just said that these criteria would make all statutory bodies under statutory regulation, he was slapping himself on the face. It also illustrates exactly why a block exemption mechanism for statutory bodies should not be put in place. If the Secretary's statement just now is correct, then all statutory bodies should likewise not be exempted under clause 5(2). Perhaps the Secretary has not noticed that the provisions in the Bill are intertwined and interrelated.

All in all, we find it difficult to accept clause 5(2) because as I have just said, clause 5(2) is a provision with continuity or generality. In other words, all four factors stipulated in clause 5(2) must be present before a statutory body would be subject to regulation by the legislation. We consider that the requirement is unnecessarily stringent. All statutory bodies should be treated equally in accordance with the legal principles. That is also why I consider clause 5 *per se* not worth supporting.

Chairman, I would like to implore all Honourable colleagues to support my amendments. Regarding Mrs Regina IP's amendments, I have already explained our stance clearly. I implore Honourable colleagues to abstain from voting on her amendments. Regarding the Secretary's proposal to make the clauses stand part of the Bill, we can hardly give it our support. Lastly, there is the amendment proposed by Mr Albert HO, which we support. Of course, the most ideal case is for my amendments to be passed. If my amendments are vetoed as a result of separate voting, I think Mr Albert HO's amendment is worth supporting. That is the result we hope to achieve, to say the least. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Before I put the question in respect of the amendments moved by Mr Ronny TONG, I wish to remind Members that if Mr Ronny TONG's amendments are passed, Mrs Regina IP may not move her amendments to clauses 3 and 5, and Mr Albert HO may likewise not move his amendment to add the new clause 5A to the Bill.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr Ronny TONG .....

(Mr IP Kwok-him raised his hand in indication)

**CHAIRMAN** (in Cantonese): Mr IP Kwok-him, what is your point?

**MR IP KWOK-HIM** (in Cantonese): I want to know if I need to declare interest.

**CHAIRMAN** (in Cantonese): If Members have direct or indirect pecuniary interest in a motion under debate, they should make a declaration before speaking. As regards the question put to vote, Members may recall that according to Rule 84 of the Rules of Procedure, no restriction applies if the question put to vote is related to a matter of Government policy, and even Members who have pecuniary interest can take part in voting. Hence, Members need not make a declaration.

Mr WONG Kwok-kin, what is your question? Is that the same question?

**MR WONG KWOK-KIN** (in Cantonese): I also have the same question. Because if a declaration of interest is required, we must do so before voting takes place. As the Chairman has already said .....

**CHAIRMAN** (in Cantonese): There is no need to make a declaration.

**MR WONG KWOK-KIN** (in Cantonese): OK, there is no need to make a declaration.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr Ronny TONG be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Ronny TONG rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr Ronny TONG has claimed a division. The division bell will ring for five minutes.

**MR WONG SING-CHI** (in Cantonese): I declare that I am a member of the Hong Kong Housing Authority.

**DR RAYMOND HO** (in Cantonese): As you are aware, I am a member of several statutory bodies.

**CHAIRMAN** (in Cantonese): As I have just said, if Members have direct pecuniary interest in a question put to vote, they cannot take part in voting even if they have declared their interests. However, as the question put to vote now relates to a matter of Government policy, no restriction applies even for Members who have pecuniary interest. Hence, Members need not declare interest.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG and Mr CHEUNG Man-kwong voted for the amendments.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr CHAN Kin-por and Mr IP Kwok-him voted against the amendments.

Ms LI Fung-ying, Mr CHIM Pui-chung, Mr IP Wai-ming, Dr PAN Pey-chyou and Mr Paul TSE abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mrs Regina IP, Mr Alan LEONG and Miss Tanya CHAN voted for the amendments.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr Frederick FUNG, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan and Dr Priscilla LEUNG voted against the amendments.

Mr WONG Kwok-hing, Mr WONG Kwok-kin, Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 20 were present, two were in favour of the amendments, 13 against them and five abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, 14 were in favour of the amendments, seven against them and four abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

**CLERK** (in Cantonese): Clause 2 as amended.

**CHAIRMAN** (in Cantonese): As the amendment to clause 2 moved by the Secretary for Commerce and Economic Development has been passed earlier, I

now put the question to you and that is: That clause 2, as amended, stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 4, 9 and 24 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Mrs Regina IP, you may now move your amendments.

**MRS REGINA IP** (in Cantonese): I move the amendments to clauses 3 and 5 of the Bill as set out in the paper circularized to Members.



*Proposed amendments*

**Clause 3 (See Annex I)**

**Clause 5 (See Annex I)**

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by Mrs Regina IP be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mrs Regina IP rose to claim a division.

**CHAIRMAN** (in Cantonese): Mrs Regina IP has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms LI Fung-ying, Dr LEUNG Ka-lau and Mr Paul TSE voted for the amendments.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr IP Kwok-him and Dr Samson TAM voted against the amendments.

Dr Margaret NG, Mr CHEUNG Man-kwong, Ms Miriam LAU, Mr CHIM Pui-chung, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Dr Priscilla LEUNG, Mrs Regina IP, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendments.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr Frederick FUNG, Mr CHEUNG Hok-ming, Ms Starry LEE and Mr CHAN Hak-kan voted against the amendments.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Ms Emily LAU, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG and Miss Tanya CHAN abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, three were in favour of the amendments, 13 against them and six abstained; while among the Members returned by geographical constituencies through direct elections, 27 were present, five were in favour of the amendments, six against them and 15 abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 3 and 5 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Mr Albert HO, you may move your amendment.

**MR ALBERT HO** (in Cantonese): Chairman, I move that new clause 5A be passed.

**CHAIRMAN** (in Cantonese): Mr Albert HO moves that new clause 5A be read the Second time. I now propose the question to you and that is: That new clause 5A be read the Second time.

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Albert HO rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong and Mr Paul TSE voted for the motion.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr IP Kwok-him and Dr Samson TAM voted against the motion.

Ms Miriam LAU, Ms LI Fung-ying, Mr CHIM Pui-chung, Dr LEUNG Ka-lau, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mrs Regina IP, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr Frederick FUNG, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan and Dr Priscilla LEUNG voted against the motion.

Mr WONG Kwok-hing, Mr WONG Kwok-kin, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, three were in favour of the motion, 13 against it and six abstained; while among the Members returned by geographical constituencies through direct elections, 27 were present, 14 were in favour of the motion, seven against it and five abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

**CHAIRMAN** (in Cantonese): Secretary for Commerce and Economic Development, you may move your amendment.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Chairman, I move the amendment to Schedule 7.

*Proposed amendment*

**Schedule 7 (See Annex I)**

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Commerce and Economic Development be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

**CLERK** (in Cantonese): Schedule 7 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That Schedule 7 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Clause 129.

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung has given notice to move amendment to clause 129.

**MR LEUNG KWOK-HUNG** (in Cantonese): Chairman, the amendment to clause 129 was originally unnecessary because I had asked the Government to add those words to the long title. However, the Government said that this could

not be done since the deadline had expired. Hence, I have to propose the addition of those words to clause 129. In fact, I propose to add those words to clause 129 just for record purpose.

The Government's attitude towards my proposal has been dubious. When we asked the Government if the ultimate purpose of this competition law is to benefit consumers, it in fact agreed to this viewpoint. However, it considers that to incorporate such objective to the Bill will have no effect. The Government has given the examples of other countries to support its argument. It claimed that since other countries have not added these contents, it is not necessary for us to do so. It has also commented that the existing provisions have implied that meaning. However, I do not agree.

At the meeting of the Bills Committee on the Competition Bill on 17 January 2011, I asked the Government what the objectives of the Bill were. The Government responded "We remain of the view that the current long title of the Bill already completely and adequately describes the objects of the Bill contained in the substantive clauses. To this end, we consider it not necessary to have a provision repeating those objects or to have a provision providing for any other objects. Moreover, the phrase recommended by the Hon LEUNG, that is, to enhance economic efficiency and the free flow of trade through promoting sustainable competition, thereby bringing benefits to both the business sector and consumers is indeed the stated objective of the Administration's competition policy" — Chairman, this is a quotation — "which is applicable regardless of whether there is a proposed cross-sector competition law. It is therefore not necessary and particularly meaningful to stipulate this pre-existing objective as one of the objects of the Bill".

What did the Government mean? The Government implied that they have made efforts. In my view, since these are the Government's stated objectives, they should be clearly stated in the Bill. I have not argued with the Government and I have just proposed the inclusion of these objectives in clause 129, and I hope that clause 129 can achieve this effect.

Moreover, the Government has expressed another view at the meetings of the Bills Committee. As I have just said, the objective of "enhancing economic efficiency and thus the benefit of consumers ....." should be added to the Bill. How had the Government responded? The Government said, "The long title of a

Bill is required by Rule 50 of the Rules of Procedures of the Legislative Council" — I am just quoting — "to set out the purpose of the Ordinance in general terms and to define the scope of the Ordinance. On this, we consider that the current long title of the Bill already completely and adequately describes the objects of the Bill contained in the substantive clauses. Apart from the long title, the Explanatory Memorandum of the Bill and the relevant Legislative Council Brief are also conducive in the interpretation of the Bill." It then goes on to say that "Furthermore, we note that Rule 58(9) of the Rules of Procedure of the Legislative Council stipulates that 'if any amendment to the title of a bill is made necessary by an amendment to the bill, it shall be made at the conclusion of the proceedings detailed above, but no question shall be put that the title (as amended) stand part of the bill; nor shall any question be put upon the enacting formula'." It then continues, "Having considered Rule 58(9) and our legal advice, we consider that the augmentation is not necessary unless there is a change in the scope of the Competition Bill .....

Evidently, there have been endless arguments between me and the Government over the long title and there has been a lot of discussion. The Government cited the Rules of Procedure to suggest that I should amend clause 129; thus I have proposed this amendment.

In the course of discussion about this Bill, we basically have the same understanding of the objectives in enacting a competition law, and we just have different views on certain issues. For any law to regulate market competition or against anti-monopoly ....., there is an anti-monopoly law on the Mainland but there is no competition law, what are the objectives? I believe various competition laws have the ultimate objective of benefiting consumers. As I have repeatedly stated, the definition of consumers is not necessarily limited to the ultimate consumers of products, it also includes different levels of consumers. The purpose of the Ordinance is to prevent consumers from being affected or harmed by anti-competitive conducts or conducts in violation of the conduct rules under the Ordinance. The problem lies with the implementation of this Ordinance. A wealthy and powerful consortium may try to hurt others with their financial strength from the outset or it may evade regulation under the conduct rules by other means, so as to establish its monopoly in the market. As we all know, enterprises may drive away other competitors with their great financial strength or by means of price-fixing, and they can transfer to consumers the costs of market monopolization through secret agreements with other enterprises. It is



very easy to understand this practice. Costs are naturally incurred in the operation of enterprises in the market. When they monopolize the market, they can transfer the costs to consumers, ultimately consumers suffer.

In fact, we have discussed the protection of consumer interests and considered how consumer interests can be protected. There are two concepts of market competition: the concept in Germany is that consumers will naturally benefit from sustained market competition. I disagree and I think that this may or may not be the case.

When we enact legislation, we must specify that consumers should eventually be benefited. The enterprises or undertakings I just mentioned will benefit through price-fixing, bid rigging or taking market shares. For example, we usually buy canned fried dace in black bean sauce from supermarkets; since the two supermarkets have engaged in price-fixing and monopolized the supply, the canned food, initially sold at \$2 a can will increase to \$4 when the supermarkets knew that the product is not sold elsewhere. Will we buy canned fried dace in black bean sauce at \$4 a can? Although we will not buy this product at first, we will eventually buy it because we want to eat canned fried dace in black bean sauce; we will buy this product even if the price increased to \$10 a can.

When we as consumers initiate proceedings against these enterprises, the addition of this provision of "ultimately benefiting consumers" will allow us to make another legal argument. The argument is that enterprises have contravened the purpose of the Ordinance; consumers have not been benefited, instead, they become victims. More specifically, the Ordinance specifies that consumers should be benefited; so the situation should at least not be worse than before. Consumers should not ultimately fall victim to the practice which violates fair competition in the market. With this long title of the Ordinance, consumers can be protected and they can initiate proceedings on this basis.

Although this will not have direct and apparent effects, the protection to consumers after the addition of this clause can evidently achieve the ultimate objective of the Ordinance as I proposed. The mid-level consumers, not only the ultimate buyers of canned fried dace in black bean sauce, will be benefited. The mid-level wholesalers or retailers may initiate proceedings if they are pressurized and driven out of the market. Firstly, the wholesalers or retailers are

upstream or midstream consumers and they can initiate proceedings when they fall victim to any misconduct. Secondly, the downstream end consumers are harmed when consortia or enterprises have anti-competitive conducts. Though we may not be able to identify the problems of enterprises with regard to their operation, or enterprises have created a false impression of protecting consumer interests, so long as it is proven one day or at any time that consumers have fallen victim to the misconduct of enterprises, or consumers cannot enjoy their interests prior to the emergence of the anti-competitive conduct, this already constitutes a cause of action.

I think the Government does not have reasons to disagree with the inclusion of this objective in the long title. I understand that the Government often imposes limitations on the long title in the legislative process because it has legislative power. For instance, in the legislative process of the rail merger — you were not the President then but only one of the Members — the Government said that the fare terms could not be included in the Bill ..... it disagreed with the inclusion of this and that. Let me take the rail merger as an example again; if a provision was added to specify that consumer interests could not be impaired after the merger irrespective of how the rail merger was achieved, or consumers can enjoy the same interests after the merger, we can initiate proceedings today, right? We do not need to talk too much and we need not stage frequent demonstrations against the unscrupulous MTRCL. The purpose specified in the long title of the Ordinance can be taken as the basis for initiating proceedings.

Hence, I think it is meaningless for the Government to state that the legislative intent has implied such objective if we read between the lines. This is meaningless. The Bill will become an ordinance upon passage; if consumer rights have not been protected by the enactment of legislation, consumers but not the Government will ultimately suffer. I believe this amendment will benefit the public.

**CHAIRMAN** (in Cantonese): Mr LEUNG, please move your amendment.

**MR LEUNG KWOK-HUNG** (in Cantonese): Excuse me, I seldom move an amendment.

**CHAIRMAN** (in Cantonese): You just need to move your amendment.

**MR LEUNG KWOK-HUNG** (in Cantonese): Let me find the relevant page of the script so that I can just read it aloud. I am sorry, I have just concentrated on speaking.

**CHAIRMAN** (in Cantonese): Never mind, Mr LEUNG, you just need to move your amendment.

**MR LEUNG KWOK-HUNG** (in Cantonese): I know that, Chairman, I move the amendment to clause 129.

*Proposed amendment*

**Clause 129 (See Annex I)**

**CHAIRMAN** (in Cantonese): This Council will now proceed to a joint debate on the original provisions of clause 129 and the amendment.

**MR ALBERT HO** (in Cantonese): Chairman, clause 129 is not very controversial. The amendment proposed by Mr LEUNG Kwok-hung adds "the objective of enhancing economic efficiency and thus the benefit of consumers through promoting sustainable competition" to the provision concerning the functions of the Competition Commission (the Commission). I think this is a very clear and concise statement of the objective, which should be the mission of the Ordinance. If the Commission wishes to state its objective in simple terms in the future, such a mission statement is the best exposition, it is much better than stating the many specific functions in clause 129. As he has just said, it is more appropriate to include those words in the long title of the Competition Bill (the Bill).

We understand that the long title is written in a negative way; I certainly understand that it is drafted this way for the sake of legal effects. The long title

is technically expressed as "prohibit conduct that prevents, restricts or distorts competition in Hong Kong; to prohibit mergers that substantially lessen competition in Hong Kong; to establish a Competition Commission and a Competition Tribunal; and to provide for incidental and connected matters". As a matter of fact, the overall objective is more or less the same as the simple objective just stated by Mr LEUNG Kwok-hung. I actually do not understand why the Government disagrees with its inclusion in the long title and I do not think its inclusion in the long title will have any adverse effects on the Ordinance or give rise to any consequences that we do not want to see.

For this reason, I understand that Mr LEUNG Kwok-hung can only choose to amend clause 129. After the inclusion of this statement, the levels of the statement in the new provision are not very similar to clauses 129(a), (b), (c), (d) and (e) because these clauses are about very specific functions; thus, it looks a bit strange, but I also understand that he has no choice but to do so.

As we agree with this objective, it is desirable for us to have a chance to state it clearly, especially when consumer interests have almost not been mentioned in the Bill and there is only one provision on such interests. Since we know that the effect is to promote the protection of consumer interests, why is it not clearly stated? As the Government disagrees with the amendment to the long title, we should support Mr LEUNG Kwok-hung's amendment to clause 129.

**MRS REGINA IP** (in Cantonese): Chairman, I speak in support of Mr LEUNG Kwok-hung's amendment. As Mr LEUNG and Mr HO have just mentioned, the important policy objective of protecting consumer interests should be included in the long title. I have already remarked that, though the Consumer Council strongly promotes the Competition Bill (the Bill), I have checked that there is only one provision in the Bill on consumer interests on page C893. It is often stated in the Bill that preventing or restricting competition is not allowed and enhancing economic efficiency is essential; but not much is mentioned about consumer interests. I am not sure if the lawyer who drafted this Bill shares the views of Alex FERRARI, a competition law expert practising law in London. In his letter to the editor of the *South China Morning Post*, he expressed that he knew the three goals of promoting competition, promoting economic efficiency and protecting consumer interests were self-contradictory but he did not know whether the Government was well aware of the fact that these goals could not be

achieved. I hope the Secretary would give a response rather than just reading from the script written by his subordinates.

Anyway, having listened to Mr LEUNG's remarks, I think Members are rather pathetic. Since he is not allowed to include the statement in the long title, he is forced to include them in clause 129, almost at the end of the Bill. An analogy is that he is not allowed to sleep in a proper bed or in the living room; he is forced to sleep in a bunker bed or a nylon bed. Yet, just a mention of the statement is after all better than none.

In Mr LEUNG's amendment, nothing can be more obvious. He hopes that members of the Competition Commission must include members representing small and medium enterprises and members representing consumer interests. Secretary Gregory SO may say that this is unnecessary and inappropriate, and he will handle the matter in a certain way. Nevertheless, there are merits when things are so obvious.

So, I am going to vote in support of Mr LEUNG's amendment. Thank you, Chairman.

**MR RONNY TONG** (in Cantonese): Chairman, the ultimate objective of this Ordinance is to promote competition. Certainly, in promoting competition, other effects will be resulted, not merely to benefit the interests of consumers. International experience tells us that the most important function and benefit of promoting competition is to promote the overall competitiveness of our society, so as to facilitate appropriate competition among competitors from other economies.

The second objective is to protect small and medium enterprises so that they can operate together with some major stakeholders in a completely level playing field.

The third objective is about consumers though I do not mean to say that consumer interests are not important. However, I think we must identify clearly the ultimate objectives of the Ordinance.

Nevertheless, I fully support Mr LEUNG Kwok-hung's amendment. While I do not think that this is particularly necessary, an express provision can at least ensure that the interests of consumers will not be neglected. This is not unjustifiable and I do not know why the Government is against this amendment.

In my view, the Government should specify in the long title that the purpose of this Ordinance is to promote Hong Kong's overall competitiveness, protect the competition rights of small and medium enterprises and consumer interests. The Government should clearly specify these three objectives. Does it mean that the Ordinance does not have these objectives if they are not specified? I do not think so. Even though Mr LEUNG Kwok-hung's amendment may be negated today, I think it is still necessary for the Ordinance to have these three main objectives.

Chairman, I support Mr LEUNG Kwok-hung's amendment.

**DR LAM TAI-FAI** (in Cantonese): Chairman, I would like to briefly speak on Mr LEUNG Kwok-hung's amendment to clause 129. I support Mr LEUNG Kwok-hung's amendment not because I am moved by the contents of his remarks and his justifications. I actually do not quite understand what he has said, especially the part about canned fried dace with salted black beans. I find that he basically does not know much about economic development or the economic and business environment. However, he has the heart to do something for small and medium enterprises (SMEs) and strive for the protection of consumer interests; so I support his general direction.

Chairman, I am not sure if you agree with my understanding of a competition law. A competition law ensures that there is market competition in a regular pattern. Economic development should be promoted in a fair, just and open environment, to attain economic effectiveness and give SMEs room for development and opportunities for growth, thereby benefiting consumer interests. I mean to say benefiting but not protecting consumer interests. The protection of consumer interests should be the responsibility of the Consumer Council and we should not rely on a competition law. I do not understand why the Government does not allow Mr LEUNG Kwok-hung to include the statement in the long title. The statement is very clear and reasonable; why has the Government done so? The wordings of "in accordance with the objective of

"enhancing economic efficiency and thus the benefit of consumers through promoting sustainable competition" are clear enough. I do not understand why the Secretary said that it was unnecessary or it did not have any special meanings. It is actually a common objective. Even if the Secretary thinks that Mr LEUNG's amendment is tantamount to drawing a snake with feet, I still think that such an express expression is beneficial rather than detrimental to the competition law. If he is rigidly disallowed to make the amendment or it is considered that his proposal should be voted down, I think the person but not his act has been criticized. I strongly disagree that Mr LEUNG Kwok-hung's amendment should be voted down.

I actually support the addition of the statement as stated in his amendment, based on a few points. The first point is sustainable competition. Competition must be sustainable and this is particularly true in respect of the development of industry and commerce, and SMEs. They do more than one business, they do business on more than one day, and they do business in a sustained manner. There must be a good business environment facilitating sustainable development in which SMEs can have sustainable development in a fair and just market that has not been monopolized. Otherwise, SMEs will become dim sum and fish baits for large enterprises and there cannot be sustainable development. Therefore, I appreciate the fact that "through promoting sustainable competition" has been clearly stated, and I believe that this effort should be made.

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

The second point is enhancing economic efficiency. Enterprises and individuals need continuous enhancement and value adding in order to have a foothold and survive in this society or in this economic environment. Thus, "enhancement" as stated in his amendment is very important, in the light of intense competition in Hong Kong. There are internal competition and external competition from the Mainland, and enterprises are facing competition from all sides and various parts of the world. For this reason, we must continuously enhance the economic effectiveness of enterprises before we can gain a foothold. He has used the words "sustainable" and "enhancing" in his amendment; so long as there is healthy and sound sustainable development, and the quality and economic efficiency of enterprises are enhanced, consumers will eventually be

benefited. I think the amendment is well-written and it reflects his clear thinking; so I really do not understand why the Government or the Secretary does not accept it, and I do not know what its or his motive is. They say that it is not necessary to include the statement, it serves no purpose, or that is the original objective, or the intended objective has been implied. I wonder why emphasis cannot be made and why the Government has failed to state the objective clearly at the outset, so that we will know that this is the objective of the competition law. Members of the future Competition Commission can also act according to this objective and general direction. Otherwise, members may have different interpretations; some of them may think that there is one-off rather than sustainable competition while some others may not understand the meaning of enhancement and they will just focus on economic effectiveness. What are the aspirations of those doing business? They hope that this year would be better than the past year, and next year would be better than this year, and they have the same hope for our economy. Hence, enhancement and sustainable development are really important.

Deputy Chairman, I restate that I will vote for Mr LEUNG Kwok-hung's amendment.

**MR WONG YUK-MAN** (in Cantonese): Deputy Chairman, regarding the amendment proposed by Mr LEUNG Kwok-hung to clause 129, which adds to the functions of the Competition Commission the objective that "in accordance with the objective of enhancing economic efficiency and thus the benefits of consumers through promoting sustainable competition", we render our support. When we compare the objective proposed by Mr LEUNG with the object of the Bill, we notice that there is a slight difference. The object of the Bill is narrower in scope, and we had criticized this point in our earlier speeches on the principle legislation. Mr LEUNG Kwok-hung has not only proposed to amend clause 129, but also proposed to amend section 2 of Schedule 5, requiring that the membership of the Competition Commission (the Commission) should include at least one member with expertise or experience in consumer welfare.

The Consumer Council of Hong Kong is one of the organizations which has made vigorous effort in promoting this legislation. In many other jurisdictions, organizations protecting consumers' benefits have been set up. In our view, the Commission which promotes fair competition plays a



complementary role in protecting consumers' benefits. Hence, the amendment will make the objective of the Commission clearer and more comprehensive. Let us look at the content of the amendment carefully. It does not merely seek to benefit consumers, it also urges for the promotion of sustainable competition and enhancement of economic efficiency. The objective so worded will enable the Commission to give regard to all sectors and strike a balance in performing its functions.

According to some overseas studies on the relationship between competition laws and consumers' benefits, if consumers' benefits are used as the sole indicator in the investigation on the impact of acquisitions and mergers on consumers, the assessment will only focus on possible increase or decrease in product prices after the merger, which is obviously inadequate. For the new enterprise formed after the merger may have a larger scale of operation, which may bring about more technological breakthroughs, improvement in the quality and diversification of products. Hence, many economics scholars consider that the objective for implementing competition laws should be focused on the overall interest of society, where the effect of distribution should be dealt with separately by means of taxation and other social policies.

The principle on overall social efficiency assesses whether the business conduct concerned will bring about greater social efficiency, and this is already the basic reference of courts in various countries in ruling relevant cases. The theory is developed further by some scholars who propose that in cases involving necessities in daily life, the competition policy should adopt the consumer-benefit-oriented principle; yet for cases involving non-necessities, the overall interest of society may be the guiding principle of the policy. This remark implies that if the objective of the Commission does not include safeguarding consumers' benefits, the enactment of such law will be unnecessary, will it not? Hence, we have made our positions on the Competition Bill crystal clear at the very beginning: First, it must achieve the purpose of imposing sanction on anti-competitive conduct in a relatively comprehensive and effective manner; second, it must safeguard consumers' benefits.

Regarding the first part, the legislation must impose sanction on organizations involving monopolization. As such, we really regard this legislation as a piece of chicken rip, which is tasteless to eat but regrettable to

throw away. Some Members, particularly Mr Ronny TONG, tell me that "it is better to have one than none", yet this is the myth or curse of "better to have one than none". Though it is true in the current circumstance that it is "better to have one than none", it is obvious that the legislation has failed to impose sanction on large enterprises.

Against this background, we joined the Bills Committee, with the mentality of seeing if we could: First, impose effective sanction on anti-competitive conduct, particularly the monopolization of large enterprises, and second, safeguard consumers' benefits. Naturally, regarding consumers' benefits, we are considering this from the perspective of people's livelihood. For people like "Long Hair" and I, who take the centre-left position, we must safeguard consumers' benefits, and the Hong Kong Federation of Trade Unions should also adopt the same position. If the implementation of the Competition Ordinance fails to safeguard consumers' benefits or undermine the protection for their interest on the contrary, it will be disastrous.

One of the scenarios arousing much discussion is the shopping malls of The Link. Since consumers basically have no choice, there is no competition indeed. Small tenants may also run food establishments, but how can they compete with consortia like Café De Coral, Fairwood and Maxim's? For the large consortia, they have their own cold storage for frozen meat. When shipment of frozen meat arrived, the meat is transported directly to their cold storage. However, for small restaurants, they have to order pork chops and chicken wings, and if the market ..... Take my wife's shop which serves beef noodles as an example. I recall there was a time she could hardly buy beef shank from Brazil due to the acute shortage, yet it was found that large consortia had bought all the stock. When we placed the order, the sellers asked us to pay cash and said that stock was available at higher price. But if we wanted to pay on one-month credit as in the past, they would not provide the beef. Later, we found out that frozen meat like chicken wings, pork chop and beef shank had all been bought by large consortia, and they might even be distributors of frozen meat. What can be done? Honestly, how can the present competition law address these problems? There are numerous examples to quote.

We are not trying to prolong the discussion. Mr LEUNG Kwok-hung has no alternative but to propose the amendment to add the objective of the

Competition Commission in performing functions, for it is most important to add "in accordance with the objective of enhancing economic efficiency and thus the benefit of consumers through promoting sustainable competition". I think Mr LEUNG Kwok-hung's amendment is not completely convincing, for what should be done if the conduct can enhance economic efficiency but not consumers' benefit? As for the idea of "sustainable competition", we who advocate the concept of this type of public policies or economic policies do not believe in this, yet we have no alternative but to include them in the amendment.

Consumers represent the public and the interests of the public must be safeguarded. Hence, this amendment is meaningful, Secretary, is it not? However, you will oppose it as usual. After all, you will oppose any amendment proposed by Members as an established practice. Secretary, you said that the Government had put forth amendments as per the requests made by Members at the Bills Committee and thus you had to oppose our amendments. You oppose the amendments of Mrs Regina IP and you oppose the amendments of Mr LEUNG Kwok-hung.

It turns out that the Government's position is to oppose the vast majority of amendments proposed by Members when bills are submitted to the Legislative Council for Second and Third Reading. This is applicable to all bills. Members may check the record. It is interesting yet strange that Government may also oppose and implore Members to oppose the amendments, for the Government has no right to vote indeed. If it wants to oppose the amendments, who will the Government call to vote against the amendments? A group of people, who is not the ruling party, will surely oppose the amendments for the Government. When a division is carried out on the amendment, the amendment will be voted down. This is the case every time, even when the amendment is reasonable. The Government has no right to vote, yet it has got the amazing knack to have the amendment negated. It is so ludicrous. Secretary, you work magic, do you? Other Directors of Bureaux can do the same, and they work magic too. They are not the ruling party and they have no right to vote in the Legislative Council, yet they have a way to work magic so that amendments proposed by Members would be negated every time. Certain, this magic is not originated from them but the Communist Party, and this is called the "separate voting".

As such, the amendment of Mr LEUNG Kwok-hung is doomed to be negated. Certainly, the amendments proposed by certain Members may not necessarily be voted down, but they are in the minority. For instance, the amendments proposed by certain pro-government Members are indeed put forth by the Government. The Member will express his views at the Bills Committee and the Government will propose the amendment on his behalf, where the Member concerned does not need to put forth the amendment. For this reason, Mr IP Kwok-him only looks at me now, he does not have to put forth any amendment nor make any speech. It is so good and so relaxing. He is simply waiting for the early completion of the procedure on the Bill. However, I foretell that the debate on this Bill has not yet come to the end. Secretary, I am sorry about that. Yet I am not the one to say whether the debate will come to an end, so do not look at me. I want to ring the bell now.

Mr Fred LI, Deputy Chairman .....

**DEPUTY CHAIRMAN** (in Cantonese): Are you requesting a headcount?

**MR WONG YUK-MAN** (in Cantonese): No, when I say "I want to ring the bell", it means "I want to ring the bell". However, I have not finished with my speech. I want to ring the bell, for we, Members should have lunch but should not vote now. It is now 1 pm, Deputy Chairman, I request a headcount.

**DEPUTY CHAIRMAN** (in Cantonese): Clerk, please ring the bell to summon Members 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): Deputy Chairman, we support Mr LEUNG Kwok-hung's amendment mainly because the safeguarding of

consumers' interest is a very important objective of the Competition Bill as a whole, and the Competition Commission must include this as its objective for performing its function. Hence, we will support this amendment. Thank you, Deputy Chairman.

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

(Mr LEUNG Kwok-hung raised his hand in indication)

**DEPUTY CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung, you will have the opportunity to speak later. After the Secretary has spoken, I will let you speak again.

**MR LEUNG KWOK-HUNG** (in Cantonese): Does any Member wish to speak?

**DEPUTY CHAIRMAN** (in Cantonese): After the Secretary has spoken, I will let you speak again. If no Member wishes to speak, I will now call upon the Secretary for Commerce and Economic Development to speak.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Deputy Chairman, the Government disagrees with Mr LEUNG Kwok-hung's amendment to clause 129 of the Competition Bill (the Bill) regarding the functions of the Competition Commission. Mr LEUNG Kwok-hung's amendment adds the sentence "in accordance with the objective of enhancing economic efficiency and thus the benefits of consumers through promoting sustainable competition" to the functions of the Competition Commission. We consider the amendment unnecessary.

The main object of a cross-sector competition law is to combat the anti-competitive conduct of various sectors and industries to enhance economic efficiency and promote free trade and thus benefiting the business sector and consumers. A fair and healthy competition environment will encourage the business sector to introduce quality products and services, so that consumers will

benefit from wider and better choices. In other words, benefiting consumers is undoubtedly one of the expected results of the competition law. However, other than promoting competition, the measures for protecting consumers and its coverage are rather extensive, where many practices and measures may not necessarily be covered by the Bill or the work of the Competition Commission to be established in future. Hence, the amendment proposed by Mr LEUNG Kwok-hung is inappropriate.

In actuality, we have included, as appropriate, the requests and conditions for giving regard to consumers in the provisions in the Bill. For instance, the Government proposes to amend Schedule 1, section 1 to include the element of "while allowing consumers a fair share of the resulting benefit", so as to enhance economic efficiency in agreements, where the agreements must benefit the consumers in order to be exempted from the application of the first conduct rule.

On the whole, we consider that the objective of benefiting consumers by promoting competition to enhance economic efficiency has been fully realized in the provisions of the Bill, and the relevant provisions have reflected the policy intent of the Government. For the above reasons, I implore Members to oppose the amendment of Mr LEUNG.

Thank you, Deputy Chairman.

**MR LEUNG KWOK-HUNG** (in Cantonese): Deputy Chairman, the Secretary's remark is reasonable. He said that this is an "automatic" system. In other words, when there is no competition in the market and when there are no actions to stabilize competition, the market will automatically run in a normal circumstance, which will bring about competition, and with competition, there are opportunities for consumers to benefit. He also said that this had been realized in the provisions of the Bill. Members should have heard the remarks of the Secretary, who said that consumers will be allowed to benefit.

According to my comments, consumers are an entity. Honestly, in this world, when we apply the concept of consumers in society, most people are consumers. Many people do not understand that consumers certainly include small and medium enterprises (SMEs), which accounts for a small share in the market and their finance and resources are limited. Consumers do not confine to

those who buy slippers; people who purchase materials for the production of slippers and people who transport slippers are also consumers. They have to purchase certain materials before they can start production. They have to consume first before they can produce goods for shipment.

During this process, the consumers whom I refer to do not confine to end consumers alone. A certain level of consumption is involved in the course of production to provide services or products for consumers at downstream. The cycle repeats till it reaches the end consumers, that is the consumers we refer to in general.

The Secretary said that the competition law would bring about more competition, there would not be anti-competitive conduct, and the benefits derived would be shared by consumers. However, I can hardly agree with this approach. I think the objective of the entire competition law should be for the protection of consumers or the benefits of consumers.

In the reply given by the Secretary in this Chamber and at the meetings of the Bills Committee on Competition Bill, he indicated that it was unnecessary to state the objectives in the legislation. Yet I would like him to think about one point: Why other countries have stated the objectives in their legislation? Does it mean that the legislatures in other countries are inferior? Another concern is the course of the enactment of legislation. In review, we know that the United Kingdom has been working on the competition law since 1940s. It is right that they had adopted a relatively obsolete concept at the beginning, and they followed the logic of the Secretary and deduced that there would be no monopoly in the market by removing trust and consumers would naturally benefit.

In fact, the course does not run like this. In addressing oligarchy or anti-competitive conducts that emerged in the development of society and economy, we notice that the interests of end consumers or consumers at various levels should be put under comprehensive protection.

Certainly, there is a proviso. As we all know, when the development of society reaches a certain stage, a large amount of resources or the concentration of wealth is needed to develop innovative technology or other items, and those items are exceptions. We have considered this point.

Suppose you are now manufacturing iPhone 6 or G6 mobile phone, you naturally have to carry out large scale financing or recruit a large number of talents, or create a competitive edge for the product concerned. If not, you can hardly develop or invent these products. How will these products be handled? We allow the production of these products, though it appears to be anti-competitive on the face of it for the time being. Why would we say that this should benefit the consumers in the end? Rightly because we notice that these incidents are inevitable, we will simply overlook it. We may perhaps find certain phenomenon appearing to be anti-competitive, yet if this may enhance the economic efficiency of society as a whole and then ensure that consumers' benefits will not be worse than that in the past; even if this has not been enhanced, it will be acceptable. The statement should be understood this way, otherwise, it will be meaningless to state so. It is simple. The legislation of Canada has also stipulated this point. How? It states that, "In order to provide consumers with competitive prices and product choices". In other words, there will be more choices and wider price ranges. This is stated unequivocally in the legislation. Moreover, in India, the protection of the consumers' benefits is also stated clearly in the legislation with the phrase, "to protect the interests of consumers". As for China, though there is no competition law, anti-trust law has been put in place for the protection of interests of enterprises and consumers — I read out the Chinese translation prepared by myself for I consider it embarrassing to read out the English version here.

In Denmark, it is also stated that users' interests should include consumers. Certainly, as I said earlier, these users refer to users at various levels. The cases in Pakistan and the Republic of South Africa are similar. Secretary, why would it be so?

I think the key is that countries enacting the legislation at a later stage are aware that consumers' benefits should not be ignored after consolidating the experience. In fact, the competition law in Hong Kong is a three-legged stool, and the three elements are: First, sustainable competition; second, economic efficiency; and third, consumers' protection. Will the three elements always be consistent? I think the answer is sometimes yes and sometimes no. However, this Council does not aim at protecting the interests of businessmen but that of users, or the disadvantaged in the market among the businessmen and entrepreneurs. Am I right? It is a matter of sustainable development.



For instance, if you allow Hong Kong ..... Hong Kong is now developing high technology and the authorities has been bragging wildly about developing the so-called six priority industries. Today, Donald TSANG will attend the Chief Executive's Question and Answer Session, and I wonder if he has accomplished any one of the goals. Regarding the so-called target industries or leading industries, the Government implement policies and allocate resources to promote their development, these industries will definitely have greater power in the market. This will definitely give rise to conducts appeared to be or are actually anti-competitive in some measure. We will accept this. Yet, the question at issue is how to ensure that the proviso will not only benefit these industries eventually. According to the Government, these industries should be allowed to do so. However, I do not think so. If these industries fail to comply with the objective, sorry, they have to be punished or they should be stopped halfway. Why do I consider it necessary to make such statement in the long title? For the long title is about the objective of the legislation. It is a different issue at the Competition Commission (the Commission) level. Now, I have settled for the second best by including this statement under the provisions on the Commission. If this objective is stated in the provisions on the Commission, we may lodge complaints against the Commission when it fails to do so. This is settling for the second best. If this is stated under the object of the legislation, it has been a long-standing practice. The lawsuit I initiated is an example. As I said this morning, the Legislative Council Ordinance was unconstitutional. Certainly, the constitution overrides the Legislative Council Ordinance. Am I right? Hence, the Legislative Council Ordinance is no good, yet it is only unconstitutional.

Therefore, the long title of legislation is extremely important. Solemnly, as Members of the legislature, we can tell the intent immediately by reading the long title. How would you say, "Mr LEUNG, we have this objective ....." Honestly, Secretary Gregory SO, you are still young. If the comrade from your party is now taking the position of the Deputy Chairman, Fred LI, he would immediately understand what I mean. Why are the four fundamental principles included in the Preamble of the Constitution of China? It seeks to state unequivocally that the leadership of the Communist Party of China shall not change despite all other changes. The provisions in the constitution have stipulated the various rights of people, yet when it comes to the four fundamental principles — as the slogan written on this placard: "Four Fundamental Principles — Callous measures muted China" — this is the proviso. As such, the long title in the preamble of the law is critical, for it states clearly the legislative intent.

As for other guidelines, other by-products derived from the legislative intent, they can be disposed of once they deviate from the legislative intent.

In this regard, I have no alternative, for the Government has told me that the long title could not be amended. According to the current practice of enacting legislation in Hong Kong, when the Government submits the Long Title to this Council, it serves as a "long dam" for protection. Secretary Gregory SO, I have made a compromise by adding this objective to the provisions on the Commission, but you still consider that this should not be supported, why? You have opposed me once. You have the market power and the political power to turn down my request at will. Now, I settle for the second best by making the compromise under the rights enjoyed by Members of the Legislative Council. I hope you will give me an opportunity, but you refuse. Worse still, you made a two-minute fervent speech to urge Members not to accept the amendment and implore them to ignore Mr LEUNG Kwok-hung's remarks and oppose his amendment. What are you opposing to? Are you opposing me for not listening to you? Or, are you opposing me for safeguarding consumers' benefits? Or, are you opposing to my priority list with regard to the three elements? I understand that benefits of consumers at various levels are contradictory to the necessary market power. In my view, consumers' benefits must be the target instead of putting the three elements on the same level.

For instance, when we ..... Now, the MTR is certainly not ..... As in the case of the Urban Renewal Authority (URA), its objective is to ..... The Government empowers the URA to carry out redevelopment in urban area. If a regulation is made in future to grant exemption to the URA, whereas the practice of the URA undermines the benefits of consumers or put consumers in a status worse than before, it will definitely be held accountable. If the problem is about the long title, prosecution may be initiated in court. And if it is the problem of the Commission, complaints may be lodged against the Commission. This is a typical example. In future, there may be a body called "The Link" — I do not know how the present case of The Link is, for it has become a private organization — if the Government intends to handle the case, I will sue the Government. If I do not sue the Government, I may sue the body concerned in order to take the Government to court.

Therefore, Secretary Gregory SO, I earnestly hope that you will reconsider your position. As a Government boasting its concern about the interests of

SMEs and the public, what are the reasons for your opposition? The addition is after all some empty words, and I only want to put them on record. Further discussion may be held in future, if so, why do you have to delete those words? You have responded lightheartedly today. However, in future, when I take you to court, we will have to examine the provisions. The judge may say, "Mr LEUNG, there is no proportionality, Counsel 'who and who', what is your point of quoting this provision?" I hope you will seriously reconsider your position. You may perhaps stand up now to state that you have just changed you mind: Though LEUNG Kwok-hung's view is incorrect, it is favourable to consumers, *(The buzzer sounded)* ..... will Members please support him.

**DEPUTY CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr LEUNG Kwok-hung be passed. Will those in favour please raise their hands?

(Members raised their hands)

**DEPUTY CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr LEUNG Kwok-hung rose to claim a division.

**DEPUTY CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

(During the division bell, THE CHAIRMAN resumed the Chair)

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG, Dr LAM Tai-fai and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Abraham SHEK, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr CHAN Kin-por and Mr IP Kwok-him voted against the amendment.

Ms LI Fung-ying and Mr IP Wai-ming abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Mr CHAN Kam-lam, Mr CHEUNG Hok-ming, Ms Starry LEE and Mr CHAN Hak-kan voted against the amendment.

Mr WONG Kwok-hing and Mr WONG Kwok-kin abstained.

THE CHAIRMAN Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 18 were present, three were in favour of the amendment, 13 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 21 were present, 14 were in favour of the amendment, four against it and two abstained. Since the question was not

agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 129 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr LEUNG Kwok-hung rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Emily LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him and Miss Tanya CHAN voted for the motion.

Dr LAM Tai-fai, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE CHAIRMAN Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 36 Members present, 31 were in favour of the motion and four abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

<b>CLERK</b> (in Cantonese): New clause 57A	Legal professional privilege
Heading to New Division before New clause 80A	Division 4 — Warning Notices
New clause 80A	Warning Notices
New clause 153A	Leave to appeal required for interlocutory appeals.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Chairman, I move the Second Reading of the new clauses and the Heading to the New Division just read. The content of the clauses is set out in papers issued to Members. I will explain the new clauses one by one.

New clause 57A is a provision on the protection of legal professional privilege (LPP). At present, Part 3 of the Bill sets out the powers and procedures of the Competition Commission (the Commission) in relation to the investigation of alleged contravention of the competition rules and creates offences in relation to investigations. There is currently no express provision in respect of the protection of LPP. Referring to similar practice in other legislation like the Securities and Futures Ordinance and the Companies

Ordinance in making express provisions to safeguard LPP, we propose to add new clause 57A to Part 3 of the Bill to expressly provide for the protection of LPP.

As I mentioned in my speech at the resumption of the Second Reading debate, we propose to add clause 80A to address the concerns of small and medium enterprises (SMEs). According to new clause 80A, if the Commission has reasonable cause to believe that a contravention of the first conduct rule has occurred and the contravention does not involve hardcore anti-competitive conduct, the Commission must issue a warning notice to the undertaking to notify the undertaking that its conduct may contravene the first conduct rule and allow reasonable time for the undertaking to cease the contravening conduct. Only when the contravening undertaking has not ceased the anti-competitive conduct will the Commission bring proceedings to the Tribunal against the anti-competitive conduct of the undertaking occurred after the warning notice is issued.

The proposed warning notice mechanism may remove the doubts of the business sector, particularly the concerns of SMEs of inadvertently involving in non-hardcore anti-competitive conduct. At the same time, the mechanism will enable the Commission to take swift action to halt non-hardcore activities. I must stress that the proposal has not undermined the enforcement capacity of the Commission in addressing the hardcore anti-competitive conducts of grave concern to the public to ensure the effectiveness of the legislation.

As for new clause 153A and clause 153 which I proposed to amend earlier, the two clauses both provides leave requirement for appeal to the Court of Appeal against decisions of the Tribunal. The amendment to clause 153 is made in response to the proposal of the Bills Committee. New clause 153A stipulates the leave requirement for appeal to the Court of Appeal, and provide for the exceptions for interlocutory appeals as the right for appeal.

The amendment to clause 153 and new clause 153A bring the appeal criteria under the Bill in line with that of the High Court Ordinance. To the business sector, no leave is required except interlocutory appeals and against certain orders of the Tribunal to lodge appeal to the Court of Appeal.

The Bills Committee has discussed and supports the new clauses proposed above, I thus implore Members to pass these amendments. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 57A, heading to new division before new clause 80A, new clauses 80A and 153A be read the Second time.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the motion is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): New clause 57A, heading to new division before new clause 80A, new clauses 80A and 153A.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Chairman, I move that the new clauses and the heading to new division just read be added to the Bill.



*Proposed addition*

**New Clause 57A (see Annex I)**

**Heading to New Division before New Clause 80A (see Annex I)**

**New Clause 80A (see Annex I)**

**New Clause 153A (see Annex I)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 57A, heading to new division before new clause 80A, new clauses 80A and 153A be added to the Bill.

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): New clause 162A

Determination of turnover  
of undertaking

Schedule 1.

**CHAIRMAN** (in Cantonese): The Secretary for Commerce and Economic Development has given notice to move the addition of new clause 162A and the amendment to Schedule 1. Mr Ronny TONG has also given notice to move the amendment to Schedule 1.

The Committee will first put to vote the motion on the addition of new clause 162A. If the motion to the Second Reading or the addition of new clause 162A is negatived, the Secretary and Mr Ronny TONG may not move their amendments to Schedule 1. If the motion on the addition of new clause 162A is passed, the Committee will proceed with the Secretary's amendment to Schedule 1. If the Secretary's amendment to Schedule 1 is passed, Mr Ronny TONG may not move his amendment to Schedule 1; and if the Secretary's amendment to Schedule 1 is negatived, Mr Ronny TONG may move his amendment to Schedule 1.

**CHAIRMAN** (in Cantonese): Members may now have a joint debate on the proposed new clause 162A, the original provisions of Schedule 1 and the amendments to Schedule 1. I will first call upon the Secretary to speak and move the amendments. After that, I will call upon Mr Ronny TONG to speak, but he may not move the amendment at this stage.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Chairman, I move that new clause 162A be read the Second time, the content of the new clause is set out in the paper issued to Members. I will also move amendments to Schedule 1 later. I will explain the aforesaid provisions one by one.

The proposed new clause 162A and the amendments to Schedule 1 to be proposed shortly are related to the newly established arrangement for agreements and conducts of lesser significance.

Proposed new clause 162A mainly provides for the technicalities relating to the calculation of turnover under the two arrangements mentioned above, and empowers the Secretary for Commerce and Economic Development to make regulations for the purpose of determining the turnover of undertakings. These new clauses are also applicable to clause 91 in relation to the calculation of

turnover for capping pecuniary penalty. Regulations made according to clause 162A must undergo the negative vetting procedure of the Legislative Council.

Regarding merger activities, it is our policy intent that apart from carrier licences issued by the Telecommunications Authority, which is currently subject to regulation, the Bill will not impose regulation on merger activities. We accept the views of the Bills Committee and agree that the existing provisions under the first and the second conduct rules may be applied to merger agreements.

To clarify our policy intent in this respect, that is, the Bill does not regulate mergers in non-telecommunications sectors at the present stage, we propose to add section 4 to Schedule 1 to stipulate that merger activities specified in Schedule 7 to the Bill will be exempted from the application of the first and the second conduct rules.

We also propose the addition of sections 5 and 6 to Schedule 1. The main purpose of the addition is to stipulate unequivocally in the Bill the details of the arrangement for agreements and conducts of lesser significance, so as to exclude undertakings under the agreement with turnover below the prescribed threshold from the application of the first and the second conduct rules.

It is a common practice in other jurisdictions for regulators of competition to issue guidelines on *de minimis* arrangements. We propose to include the relevant criteria into the legislation mainly in response to the aspiration of the Bills Committee and SMEs for more specific criteria. For undertakings entering into agreement under the arrangement of lesser significance, if their turnover does not exceed HK\$200 million in the preceding financial year, the agreement concerned will be excluded from the application of the first conduct rule. However, the exemption is not applicable to agreements on hardcore anti-competitive activities, namely, price-fixing, bid-rigging, market allocation and output control.

As for the arrangement for conducts of lesser significance, with reference to the average turnover of SMEs with more than five employees, we propose that the conduct of undertakings with a turnover not exceeding HK\$40 million will not be subject to the second conduct rule. We believe the proposed new

arrangements for agreements and conducts of lesser significance have addressed the concerns of the Bills Committee and the business sector, SMEs in particular. The exemption arrangement provided for in Schedule 1 will also be conducive to undertakings in making self-assessment in their participation in agreements and conducts. I implore Members to pass these amendments proposed by the Government.

I will move the amendment to section 1 of Schedule 1 shortly. The provision excludes an agreement enhancing overall economic efficiency from the application of the first conduct rule. Regarding this provision, we have accepted the proposal of the Bills Committee to stipulate the objective of enhancing consumers' benefit in the provision. With reference to the practices in other competition jurisdictions, we propose to add the element as "while allowing consumers", so as to ensure agreements that can enhance overall economic efficiency should also fulfil the criterion of protecting consumers' benefit in order to be exempted from the application of the first conduct rule. This amendment is also consistent with the objective of the overall competition policy of the Government in enhancing economic efficiency and the free flow of trade to bring benefits to consumers.

Chairman, I understand that Mr Ronny TONG will move amendments to Schedule 1 to add sections 4, 5 and 6. The main difference between his amendments and the Government's amendments to Schedule 1 I mentioned earlier is that the turnover thresholds for agreements and conducts of lesser significance are prescribed at \$100 million and \$11 million respectively. The Government opposes the amendments of Mr Ronny TONG. I will give a more detailed response when I speak the second time later. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 162A be read the Second time.

**MR RONNY TONG** (in Cantonese): Chairman, the difference between the Secretary and I is indeed very simple. It lies in the exemption threshold. Chairman, during the deliberation of the Bill, we noticed that small and medium enterprises (SMEs) had reservation on certain respects of the Bill. Last year, the Secretary stated that after consulting various parties and affiliations, business

associations and SMEs, he found it necessary to set an exemption threshold, which might bring benefits to SMEs. Thus, the Secretary proposed the so-called "five major compromises", and one of them is the setting of a turnover threshold.

Chairman, the threshold proposed by the Secretary back then is precisely the threshold proposed by me today. After he put forth this exemption threshold, we had consulted some community groups, including the Consumer Council and various parties and affiliations, and the proposal was considered barely acceptable. However, after the Secretary made the "five major compromises", we had advised that no further compromise should be made. Unfortunately, the Secretary compromised over the exemption threshold again a few months ago. The threshold was further raised from the presently proposed level — from \$100 million to \$200 million for exclusion from the first conduct rule and from \$11 million to \$40 million for exclusion from the second conduct rule.

Chairman, the Secretary explained that only by raising the threshold to this level can ensure that SMEs find it acceptable and satisfactory. Chairman, while I understand the difficulties of the Secretary, we do not think that the exemption threshold should be revised so arbitrarily. Nor should it be arbitrarily revised too frequently. Chairman, given that a consensus has been reached last year and the agreed thresholds are \$100 million for the first conduct rule and \$11 million for the second conduct rule, which are acceptable to all, we are of the view that the Secretary should not unilaterally extend the threshold further.

What concern us more is that, as Hong Kong is a small economy, the turnover in those emerging markets or industries may be pretty low, and if the turnover threshold is set too high, operators or business undertakings which entered the market at an early stage may make use of the opportunity when the market has yet to be fully developed, to monopolize the market. Nonetheless, as the market continues to develop after it is monopolized, it would be more difficult at that time to restrict their operation and prevent them from monopolizing the emerging markets by adopting the measures or principles specified in the Ordinance than bringing them under control right at the beginning.

Therefore, we consider that the exemption threshold should not be raised indefinitely to an extent that some operators can easily monopolize the emerging markets. We therefore opine that the Secretary should adopt again the

exemption thresholds proposed by him last year. I fail to see why he has to renege on his words under the present circumstances. Although it seems that his proposal is welcomed by many people, I do hope that he will think twice. Such exemption is not beneficial to either SMEs or the emerging markets.

Thus, I hope that colleagues will oppose the Secretary's amendments and support my amendments.

**MR ANDREW LEUNG** (in Cantonese): Chairman, the Competition Bill is a new legislation and many small and medium enterprises (SMEs) have difficulties in understanding the legal provisions and the first and second conduct rules. For example, they have no idea if they have a substantial degree of market power in a market. Furthermore, some Hong Kong industries have all along relied on their business associations to set the norms, fees, or carry out centralized purchase or price negotiation. During the deliberation, we often asked government officers if such conduct by business operators constituted a breach of the law. The officers replied that it all depends on the merit of individual cases and this is subject to the ruling of judges. After hearing the reply, SMEs of various trades and industries felt pretty worried.

In fact, government officers have stressed time and again that the Legislative Council is doing good to SMEs and has no intention of pinpointing those which are completely incapable of influencing the market. This is why some SMEs have suggested the Government to exempt all SMEs in a broad-brush manner. I agree with the government officers that it is not right to grant a blanket exemption for all SMEs, because if they collude to breach the law without being penalized, people's interests will not be safeguarded, which is illogical.

Therefore, many Members proposed to draw reference from the *de minimis* arrangement of the United Kingdom by setting a reasonable threshold. If an enterprise does not exceed the threshold, it means that its size is so small that any attempt to prevent, restrict or distort the market will not achieve any effect. Neither is there a need for the Competition Commission (the Commission) to put in resources to look into cases where prosecution will not be instituted. To facilitate the work of the Commission, investigations and enforcement actions should only focus on irregularities. The authorities have accepted our proposal.

Actually, we proposed to set the thresholds at \$100 million and \$11 million respectively in October. In other words, if an enterprise which has signed an agreement has an annual turnover of no more than \$100 million or \$11 million, it will be excluded from the first and second conduct rules respectively.

Chairman, we have already spent much time arguing on these two figures. According to the Census and Statistic Department, the \$11 million threshold set under the *de minimis* arrangement to tackle enterprises' abuse of market power was calculated on the basis of the data of local SMEs. However, we have pointed out that the data should not include that of shell companies and "one-man" companies. To be fair, in order to meet the threshold, the monthly turnover of an enterprise should only be about \$900,000. Deducting the miscellaneous expenses and costs of merchandise, an enterprise can probably employ eight to 10 or even fewer workers. It actually belongs to a "micro company", so how can it have market power? Not to mention the abuse of market power.

The authorities subsequently increased these two figures to \$200 million and \$40 million, which I think is more reasonable. During the resumption of the Second Reading of the Bill, the Secretary stated that he would adopt a minimum market threshold of 25% when defining the "substantial degree of market power". Normally, SMEs will not exceed this threshold. The authorities have also explained clearly that in respect of the second conduct rule, so long as the market share of an enterprise is less than 25%, then even if its turnover exceeds \$40 million, it will not be regarded as having a substantial degree of market power, unless there is sufficient evidence showing otherwise. Since SMEs can rest assured with this, I will accept the Secretary's amendments.

Yet, I would like to draw the authorities' attention to enterprises engaging in the buying and selling of high-valued goods like jewelry and watches, or restaurants holding banquets, as their turnover may easily exceed \$40 million. I therefore hope that the Government will conduct regular reviews in the future. Chairman, with these remarks, I support the Government's amendments but oppose Mr Ronny TONG's amendments.

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

**MR ALBERT CHAN** (in Cantonese): Chairman, I think the amendments proposed by Mr Ronny TONG have highlighted one very important point, which warrants Members' careful consideration. With regard to monopolization and the relevant legal provisions, while it is true that generally issues relating to major enterprises and the whole territory are involved, our experience in district affairs has shown that geographical monopolization is also an important issue in many cases.

I have mentioned the situation of Tung Chung and Tin Shui Wai time and again. Take Tin Shui Wai as an example. There are just two landlords, namely the Link and the Hutchison Whampoa Group, and the operation of market in the area is basically awarded through a single contractor. Hence, there is only one market serving the entire district. What is more, the intimate relations between stall operators and market contractor often constitute collusive pricing and price fixing. Basically speaking, it only needs two single contractors to control the prices of food and drinks consumed by 100 000 people.

Therefore, if the threshold is set too high and certain industries will unlikely be brought under statutory control, resulting in people having to bear the immense pressure and exorbitant costs brought about by anti-competitive conduct, which neither the Ordinance nor the Competition Commission can deal with. This is unfair to members of the public.

The number of industries involved is not small. They include ordinary food stalls, herbal shops and butcher's stalls. While supermarket is certainly an example, manipulation in other industries is also worthy of our attention. Therefore, in order to cover economic activities such as geographical monopolization and the geographical manipulation of prices and services, the amendments proposed by Mr Ronny TONG can strengthen supervision in this regard and enhance the protection of consumers. Therefore, People Power supports Mr Ronny TONG's amendments.

**MR FREDERICK FUNG** (in Cantonese): Chairman, the issue under discussion is how the Government can make rules to provide for the possible influences on competition. We oppose the definitions of the first conduct rule and the second conduct rule, as both definitions proposed by the Government and Mr Ronny



TONG are basically the same, the only difference lies in the threshold level. In our opinion, the rules should not be defined as such.

What is the viewpoint of the Hong Kong Association for Democracy and People's Livelihood (ADPL) then? Some representatives from the business sector called for a blanket exemption for all small and medium enterprises (SMEs) in view of their small size and limited influence on the market, thereby excluding them from statutory control. We, however, have reservation about this. Being SMEs is absolutely not a pretext used to justify their exemption from statutory control, because it is also possible for them to adopt anti-competitive conduct. Take the old district Sham Shui Po as an example. As the area often has renovation and redevelopment projects, price fixing and bid-rigging practices are common. If a contractor can be exempted from statutory control simply because of its small size, this is tantamount to tolerating anti-competitive conduct to the detriment of public interest, which is unacceptable.

Although the Government has not accepted in full the abovementioned proposals put forth by the business sector, it did make some major concessions and compromises. Firstly, anti-competitive conduct has been divided into hardcore and non-hardcore activities. The so-called hardcore anti-competitive conduct includes price-fixing, bid-rigging, market allocation and output control. Undertakings, large or small, must be brought under control. For non-hardcore anti-competitive conduct, such as restrictions on advertising, collective refusal to supply and the development of standardization agreements, a "warning notice" mechanism will be introduced. In short, it means that the Competition Commission is required to warn the infringing parties before instituting any legal proceedings in respect of non-hardcore anti-competitive activities, thereby enabling them to correct their malpractices before any legal proceeding is formally instituted. This approach has provided great protection for SMEs and prevented them from being involved in proceedings against contraventions, thereby saving them from suffering any financial loss.

Regrettably, some representatives from the business sector still find it unacceptable. They insisted that the threshold proposed under the *de minimis* arrangement should be provided in the law for the reason that SMEs might unwittingly breach the law or they have limited influence on the market. The authorities subsequently made further concessions, one time after another, and adopted turnover as the threshold for the so-called non-hardcore anti-competitive

conduct. Undertakings with a turnover of \$100 million (which was later further increased to \$200 million) will be excluded from the regulation of the first conduct rule. The ADPL nonetheless considers such concession neither appropriate nor desirable. Worse still, the abovementioned exemption threshold is tantamount to giving a green light to certain anti-competitive conducts by allowing enterprises with a turnover less than the threshold to rightly engage in non-hardcore anti-competitive conduct. This is extremely undesirable and completely runs counter to the original intent of promoting fair competition to make it more consolidated and popularized.

Chairman, similar amendments has been made to the second conduct rule by setting a threshold under the *de minimis* arrangement. The original provisions of the Bill have clearly prohibited undertakings having market power to engage in anti-competitive conduct. And yet, in view of the small size of SMEs which will unlikely have a substantial degree of market power, the Government has adopted a turnover of \$11 million as the threshold. It subsequently "knelt down" again by raising the threshold to \$40 million so that more enterprises will be excluded from the application of the second conduct rule so long as their turnover is lower than the threshold. Both the ADPL and I consider such concession by the Government completely irrational. In fact, the "substantial degree of market power" specified in the second conduct rule is a threshold. The inclusion of an additional turnover threshold for SMEs is therefore redundant, and has created unnecessary obstacles to the implementation of these conduct rules.

Chairman, market share should be the only yardstick for measuring market power. While some markets are genuinely small in size, some are pretty large. In those relatively smaller markets, some SMEs may secure a market share of 25% while the turnover still remains lower than the threshold proposed by the Government. In other words, it is still possible for some enterprises with turnover lower than the threshold to rightly abuse their market power to attack competitors in the same market. Is this an additional privilege for SMEs?

Chairman, let me try to illustrate with the transactions conducted in some small markets. I am just trying to illustrate with an example, so the data may not be very accurate. In a small market selling milk formulas or salted fish, for example, the market share of some companies may exceed 25%. This is indeed a very high threshold which would suffice to exert influence on the entire market,

but it is also true that the overall turnover has yet to reach \$40 million. In other words, these small-to-medium-sized companies with pretty low turnover are allowed to manipulate the transaction, prices and pricing of the entire market. Therefore, with regard to this case, I think that it is both inappropriate and incorrect to mandatorily provide a regulatory requirement. It would be more reasonable and appropriate to use the local market share as the regulatory requirement. This would bring all undertakings, even if they are SMEs, under control and supervision so long as they have sufficient market power.

When Mr Albert CHAN spoke earlier, he mentioned a certain market. I nonetheless will not consider from such a narrow perspective, confining to a particular street or housing estate. Rather, I will look at the city of Hong Kong as a whole. Our kaifongs are very smart. Even if the product sold in this street is dozens of cents higher than that of the other street, they will turn to buy from the latter. They will only give up if nowhere else in Hong Kong sells cheaper. I therefore consider it more appropriate to deal with the matter by considering Hong Kong as a whole. If the market share of certain SMEs in Hong Kong reaches 25% above, they should be brought under the control of the Ordinance.

Hence, I do not agree to adopt the yardstick as proposed by the Government. Although Mr Ronny TONG has proposed an amendment to lower the threshold, given my disagreement with this yardstick, I will oppose the amendments proposed by both of them. Thank you, Chairman.

**DR LAM TAI-FAI** (in Cantonese): Chairman, someone told me that the central theme of Mr Ronny TONG's amendments is to have the small and medium enterprises (SMEs) unwittingly breached the law. I cannot tell if this is true or not. In Mr Ronny TONG's present amendments, he proposed to lower the thresholds for exclusion from the first and second conduct rules under the *de minimis* arrangements to the original level proposed by the Government, namely \$100 million and \$11 million respectively. I absolutely cannot agree to such amendments.

In fact, when the thresholds were first proposed by the Government late last year, I had already told the Government that these thresholds, which had completely veered from the actual market situation, might arouse serious concern and worries from SMEs. Instead of providing sufficient protection and

assurances to SMEs, the thresholds had brought grave concern to the industry. Fortunately, the Government has taken heed of our advice and heard the views and aspirations of the industry, thereby gaining a better understanding of the actual situation, and agreed to raise the thresholds for exclusion from the first and second conduct rules under the *de minimis* arrangement. I think that this is a comparatively more desirable move of the Government in the entire legislative process.

Regarding the threshold for exclusion from the second conduct rule — an annual turnover of \$11 million — the number of SMEs having an annual turnover of \$11 million is not small. While an annual turnover of \$11 million may regard by the general public a good business, it is absolutely not a huge sum of money or big business to businessmen. Imagine that the annual turnover of a mere \$11 million is being averaged on a monthly basis, it is only \$900,000 for each month. Please note that this \$900,000 is just the turnover, but not the profit. Nowadays, all SMEs operating in Hong Kong have to pay exorbitant rent and high wages, as well as subject to high inflation, high imported costs and high administrative costs in various respects. Is there any profit from the \$900,000 monthly turnover? There is none in many cases. Even if there is any, the amount will be negligible. It may probably be at a single digit rate, say 3% or 5%. What is 5% of \$900,000? It is \$45,000. What if they unwittingly breach the law and have to seek legal assistance from Mr TONG, SC, or other lawyers to address their legal problems? I guess the monthly profit is insufficient to pay the attorney fees.

Therefore, the \$11 million is actually a pretty small rather than a large sum of money. Undertakings with such a low turnover should not be regarded as SMEs, but micro-enterprises. How can these small enterprises, SMEs or micro-enterprises influence the market? How can they grasp market power? On the contrary, they should feel grateful if they can luckily secure a foothold and are not being bullied, exploited or preyed on. Thus, I have no idea why Mr Ronny TONG suddenly put forward the proposed thresholds again in his amendments. Since his amendments have divorced from reality, I will definitely not support them.

The Government always says that we should make more reference to overseas legislation, preferably the laws of the United Kingdom, when enacting local legislation. Members may take a look at the British law. Given that even

for the "small agreements", the amount is as high as GBP 20 million, so if we calculate on the basis of the current exchange rate, it would be some \$200 million, which has exceeded the \$200 million threshold for exclusion from the first conduct rule. Many Members always say that we should make more reference to overseas legislation, preferably laws of advanced countries like the United Kingdom and the United States of America, when enacting local legislation. I wonder why reference was made sometimes, but not always. It seems that this is done on a selective basis, which makes me feel very puzzled. Some people have deliberately copied only bits and pieces but not all, and purposely tightened the threshold. Is it really like what some people have said, they intend to let SMEs unwittingly breach the law and get involved in lawsuits? They are ill-intentioned. I certainly do not appreciate nor support their approach of targeting our SMEs.

Chairman, the last point that I want to make is that the conduct rules only pinpoint at non-hardcore conduct — as the Secretary has pointed out earlier — whereas hardcore conduct such as big-rigging, market allocation and price-fixing are not covered. Therefore, the arrangement only protects legally operated businesses. Regardless what the turnover is, so long as the business involves bid-rigging and price-fixing, it would be subject to challenge and prosecution, even if the turnover is high. Therefore, this is a separate issue.

Chairman, I would like to take this opportunity to talk about the industry by citing a recent study. It was conducted by members of the Chinese Manufacturer's Association of Hong Kong (CMA), and was led by me. The findings of the study is pretty positive because 72% of SMEs accepted the \$200 million threshold for exclusion from the first conduct rule under the *de minimis* arrangement, whereas 76% of SMEs accepted the \$40 million threshold for exclusion from the second conduct rule. Therefore, the two thresholds presently proposed by the Government were agreed and accepted by both SMEs and the CMA.

Last of all, I would like to reiterate my position in this regard. I support the Government's amendments. I so submit.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): Chairman, I request a headcount.

**CHAIRMAN** (in Cantonese): Did you request a headcount? Clerk, please ring the bell to summon Members to the Chamber.

**MR RONNY TONG** (in Cantonese): When will the morning session of today's meeting end? Chairman, may I ask when the morning session of this meeting will end?

**CHAIRMAN** (in Cantonese): As the Secretariat needs about 15 minutes to prepare for the Chief Executive's Question and Answer Session, we will therefore suspend the meeting at 2.45 pm at the latest.

**MR RONNY TONG** (in Cantonese): Chairman, will the meeting resume after the Question and Answer Session ends?

**CHAIRMAN** (in Cantonese): Yes, we will resume the meeting 15 minutes after the Question and Answer Session ends.

**MR RONNY TONG** (in Cantonese): We will have to return 15 minutes afterwards, fine, Chairman.

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

**CHAIRMAN** (in Cantonese): Mr WONG Ting-kwong, please speak.

**MR WONG TING-KWONG** (in Cantonese): During the deliberation stage of the Bills Committee, the industry has vigorously asked the Government to revise the turnover thresholds for exclusion from the first and second conduct rules as

specified in the Competition Bill (the Bill) to \$200 million and \$40 million respectively. As Dr LAM Tai-fai has said earlier, we do not have the slightest idea of how the Government drew up the original yardsticks in the first place. This is precisely what the industry — especially small and medium enterprises (SMEs) — have been concerned about. One important point is, as Members can have imagined, apart from the "four major hardcore conduct" (namely, bid-rigging, pricing-fixing, market allocation and output control) which SMEs should refrain from breaching, they are susceptible to breach the threshold requirement. Their concern is therefore justified.

The SMEs have requested us to relay their concern to and argue with the authorities, and tell them the true picture of the situation at the Bills Committee meetings. Consequently, the authorities revised the thresholds for exclusion from the first and second conduct rules to the current level. I fail to see why colleagues have to revert it to the original level. As they often emphasize "public views", I can also say that SMEs are at the basic level and they account for more than 95% of the industry of Hong Kong. They have therefore made great contributions to both the economy and people's livelihood. I cannot figure out why, in the course of examining the Bill, some colleagues have not targeted at those major enterprises which have monopolized the market or being hegemonic, but have placed SMEs on pins and needles. Now that the Government is willing to put forth a reasonable proposal, then why do Members make it step back to square one, thereby causing concern to the SMEs? I hope that Members will think twice when they vote later.

Thank you, Chairman.

**CHAIRMAN** (in Cantonese): As I said just now, in order to enable the Secretariat to prepare for the Chief Executive's Question and Answer Session to be held at 3 pm, I will now suspend the meeting and resume it 15 minutes after the relevant session ends.

2.37 pm

Meeting suspended.

4.50 pm

Committee then resumed.

**CHAIRMAN** (in Cantonese): Committee now resumes. Committee now resumes the examination of the new clause 162A, Schedule 1 and the relevant amendments.

Does any Member wish to speak?

**MR ALBERT CHAN** (in Cantonese): Chairman, many Honourable Members are now having a heated discussion in the Ante-Chamber, and I want to invite them back. I request a headcount.

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

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

**CHAIRMAN** (in Cantonese): Meeting now resumes. Does any Member wish to speak?

**MR ALBERT CHAN** (in Cantonese): Chairman, I want to give a simple reply and share some views in the hope that Honourable Members (particularly those who support small and medium enterprises (SMEs)) can consider how a balance can be achieved. They are concerned and worried that as the relevant amendment proposes to lower the turnover threshold to \$11 million, it might create liabilities and problems for SMEs. I absolutely agree that the Competition Ordinance (the Ordinance) aims at offering sectoral protection, with the original target being the "predators".



It is our hope that the Ordinance *per se* can target the many mega-consortia which manipulate the economy, so that fair competition can be given full play through the regulation imposed by the Ordinance in many aspects. However, as I have said earlier, Hong Kong's situation is similar to those in overseas countries. In overseas countries, there are many small towns and villages, having their own economy and enterprises. The impact of regional manipulation is equally important for the people and the consumers. When considering an issue, we must of course analyse from various levels. Considering on a territory-wide basis, such as the issues we often talk about in respect of oil supply, monopoly in the electricity market, supermarkets, and so on, is there any fair competition?

When we go to a community, the daily necessities of local residents, including clothing, food, housing and transportation, are all equally important. Just now, Mr Frederick FUNG has said that if the kaifongs in Sham Shui Po find the prices of a market expensive, they will go to another market in the neighbourhood. There is no such choice for local residents in Tin Shui Wai or Tung Chung because the two markets in Tung Chung are under the LINK and managed by a single contractor. Of course, the two single contractors are different companies. All markets in Tin Shui Wai are under the LINK, that is, the markets serving 300 000 people are all controlled by the LINK under a single contractor. Of course, the single contractor of various estates is different. However, this situation can easily give rise to market manipulation by certain people. As a result of manipulation, the consumers, that is, the 300 000 local residents have to pay unreasonable or even expensive prices. As I have said previously, as a result of manipulation, local residents must pay high prices for Chinese medicine, or foodstuff such as vegetables, pork or even bean curd. Of course, many residents in Tin Shui Wai prefer to go to Yuen Long to buy food to save some money, even taking into account the transport cost.

Nonetheless, if the Ordinance *per se* can regulate the sectors I just mentioned, I consider that it will benefit the consumers if the opportunity for regulation by the Ordinance can be increased by lowering the turnover threshold. Of course, it is absolutely not my intention that the Ordinance should focus on SMEs with a lower asset value. However, this Ordinance is about fair competition. If the relevant sector complies with the principle of fair competition, it should not come under the investigation and prosecution by the Competition Commission. We can often see in the district that all related stalls in the same market or two different markets, such as pork stalls or vegetable

stalls, are actually operated by a group of relatives even though the stall names are different. Similar cases can also be found in fruit stalls. For instance, two or three different fruit stalls may actually be operated by close family members. As we can see, in some estates, there may be several adjoining dried seafood stalls, which turn out that the three dried seafood stalls are actually operated by the same owner. Therefore, even though members of the general public may perceive that competition exists because there are several stalls, it turns out that the stalls are actually controlled by the same person under different company names.

As Honourable Members know all too clearly, prices will definitely be manipulated under this scenario, and consumers will definitely be made to bear unreasonable prices as a result of manipulation. With fair competition, the relevant operators can adjust the prices suitably. For instance, many Members would know that it is definitely cheaper to buy food in markets in Sham Shui Po than in Central. Hence, although pressure will be created for some SMEs if the turnover threshold is lowered, it can give a fair treatment to consumers, ensure fair competition and prevent the emergence of monopolistic or unreasonable operating conditions on a regional and district basis as a result of capital restriction, which is harmful to consumer rights. Hence, we continue to support the relevant amendments. Thank you.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Commerce and Economic Development, do you wish to speak again?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Chairman, the Government opposes the amendments proposed by Mr Ronny TONG to add clauses 4, 5 and 6 to Schedule 1 of the Bill. The contents of Mr Ronny TONG's proposed amendments to add clauses 4, 5 and 6 to Schedule 1 are actually the same as those of my later amendment to add clauses 4, 5 and 6 to Schedule 1, but Mr TONG's amendments suggest that the

turnover thresholds in relation to agreements of lesser significance and conduct of lesser significance are \$100 million and \$11 million respectively. I think the relevant amendments are inappropriate.

The turnover thresholds stated in Mr Ronny TONG's amendment were in fact the Government's proposal in October last year. Subsequently, the Bills Committee had discussed the relevant thresholds in detail, and invited views from deputations. Taking into account the views of the Bills Committee and deputations, the Government suggested in April this year that the relevant thresholds be adjusted to \$200 million and \$40 million respectively. When considering the adjustments to the relevant thresholds, we have made reference to the latest statistics from the Census and Statistics Department (C&SD) on the annual average turnover of small and medium enterprises (SMEs); in particular, we have taken on board the suggestion of the Bills Committee and deputations that very small companies with five or less employees should be excluded, so as to better reflect the actual operation of SMEs.

I would like to reiterate that when considering any adjustment to the turnover thresholds, we have all along given priority to the important principle of ensuring the effectiveness of the Bill in tackling anti-competitive conduct which is of public concern. In future, the Competitive Commission can still conduct investigations into suspected cases of hardcore anti-competitive practices, that is, price-fixing, bid-rigging, output control and market allocation, as well as take immediate enforcement actions. All agreements involving hardcore anti-competitive conduct will not be exempted under the arrangement for agreements of lesser significance, regardless of the total turnover of the undertakings concerned.

As for the exemption threshold for conduct of lesser significance under the second conduct rule, though our present proposal is a turnover of \$40 million, in the sectors of public concern, such as large chain stores, supermarkets and oil companies, the annual turnover of undertakings having market power far exceeds the proposed threshold of \$40 million. Hence, these undertakings will not be exempted. In the future, the Government will review the turnover threshold for conduct of lesser significance from time to time having regard to the objective criterion of the average turnover of SMEs and the updated statistics provided by the C&SD. We believe that the turnover thresholds proposed by the Government as regards the arrangement for agreements of lesser significance and

conduct of lesser significance have already struck a proper balance between responding to the concerns of SMEs and maintaining the effectiveness of the Bill.

On account of the above reasons, I implore Honourable Members to support the Government's amendments, and oppose Mr Ronny TONG's amendment. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Before I put to you the question on the Secretary for Commerce and Economic Development's motion that the new clause be read the Second time, I wish to remind Members that if the Secretary's motion is negatived, both he and Mr Ronny TONG may not move their amendments to Schedule 1.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the new clause 162A be read the second time. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Dr Margaret NG rose to claim a division.

**CHAIRMAN** (in Cantonese): Dr Margaret NG has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Dr Samson TAM, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted against the motion.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 43 Members present, 39 were in favour of the motion and three against it. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

**CLERK** (in Cantonese): New clause 162A.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Chairman, I move that the new clause 162A be added to the Bill.

*Proposed amendment*

**New clause 162A (See Annex I)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the new clause 162A be added to the Bill.

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Secretary for Commerce and Economic Development, you may now move your amendment.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Chairman, I move the amendments to Schedule 1.

*Proposed amendment*

**Schedule 1 (See Annex I)**

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Commerce and Economic Development be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Mr KAM Nai-wai, Ms Starry LEE, Mr Paul CHAN, Mr CHAN Kin-por, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Dr Samson TAM voted for the amendments.

Mr LEE Cheuk-yan, Dr Margaret NG, Mr LEUNG Yiu-chung, Ms Audrey EU, Mr Ronny TONG, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted against the amendments.

Mrs Regina IP abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 47 Members present, 33 were in favour of the amendments, 12 against them and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendments were passed.

**CHAIRMAN** (in Cantonese): As the Secretary for Commerce and Economic Development's amendment has been passed, Mr Ronny TONG may not move his amendment to Schedule 1.

**CLERK** (in Cantonese): Schedule 1 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That Schedule 1, as amended, stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Schedule 4.

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

(No Member indicated a wish to speak)



**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That Schedule 4 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Schedules 2, 3, 6, 8 and 9.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Chairman, I move the amendments to Schedules 2, 3, 6, 8 and 9, as set out in the paper circularized to Members. In response to the suggestions of the Bills Committee, the Government proposes these amendments to Schedules 2, 3, 6, 8 and 9, which are mainly textual, technical and drafting in nature, so as to improve the clarity and conciseness of the Bill.

I wish to explain the following two proposed amendments in particular. Schedule 2 sets out the procedural requirements relating to the acceptance and variation of commitments, the withdrawal of acceptance of commitments, as well as the release of commitments. The proposed amendments to Schedule 2 are mainly intended to specify that the Competition Commission (the Commission) would need to publish the relevant notices by making use of the latest technology available including the Internet, and in any other manner as the Commission considers appropriate.

The new section 39 proposed to be added to Schedule 8 is mainly intended to make corresponding amendments to the Communications Authority Ordinance to specify that the Authority has concurrent jurisdiction with the Commission over the telecommunications and broadcasting sectors under the Competition Ordinance.

The Bills Committee has discussed these amendments and expressed support for them. I implore Members to pass these amendments. Thank you, Chairman.

*Proposed amendments*

**Schedule 2 (See Annex I)**

**Schedule 3 (See Annex I)**

**Schedule 6 (See Annex I)**

**Schedule 8 (See Annex I)**

**Schedule 9 (See Annex I)**

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Commerce and Economic Development to Schedule 2 be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr LEUNG Kwok-hung rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE, Dr Samson TAM, Mr Alan LEONG, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted for the amendments.

Mrs Regina IP abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 41 Members present, 39 were in favour of the amendments and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendments were passed.

**CLERK** (in Cantonese): Schedule 2 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That Schedule 2 as amended stand part of the Bill.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr LEUNG Kwok-hung rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr LAU Kong-wah, Mr LAU Wong-fat, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan

LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr WONG Yuk-man voted for the motion.

Mrs Regina IP abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 40 Members present, 38 were in favour of the motion and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Commerce and Economic Development to Schedules 3, 6, 8 and 9 be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr LEUNG Kwok-hung rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Ms Audrey EU, Mr WONG Kwok-hing, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted for the amendments.

Mr WONG Yuk-man voted against the amendments.

Mrs Regina IP abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 42 Members present, 39 were in favour of the amendments, one against them and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendments were passed.

**CHAIRMAN** (in Cantonese): Schedules 3, 6, 8 and 9 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That Schedules 3, 6, 8 and 9 as amended stand part of the Bill.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr LEUNG Kwok-hung rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Dr Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr LAU Kong-wah, Mr LAU Wong-fat, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Ms Audrey EU, Mr WONG Kwok-hing, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr Paul CHAN, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted for the motion.

Mr CHAN Hak-kan voted against the motion.

Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 38 Members present, 34 were in favour of the motion, one against it and two abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

**CLERK** (in Cantonese): Schedule 5.

**CHAIRMAN** (in Cantonese): The Secretary for Commerce and Economic Development has given notice to move amendments to a number of provisions in Schedule 5, including section 2(1).

Mr LEUNG Kwok-hung has also given notice to move an amendment to section 2 of Schedule 5 to add subsection (1A).

Irrespective of whether the Secretary for Commerce and Economic Development's amendments are passed, Mr LEUNG Kwok-hung may move his amendment to Schedule 5.

**CHAIRMAN** (in Cantonese): Members may now have a joint debate on the original provisions of Schedule 5, as well as the amendments thereto. I will first call upon the Secretary to speak and move his amendments, to be followed by Mr LEUNG Kwok-hung but he may not move his amendment at this stage.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Chairman, I move the amendments to Schedule 5, as set out in the paper circularized to Members. The amendments to Schedule 5 are mainly proposed in response to views and suggestions of the Bills Committee. In addition, we have proposed some textual, technical and drafting amendments to



the Schedule, so as to improve the clarity and conciseness of the Competition Bill (the Bill). We would like to highlight some of the amendments as follows.

Under section 2(1) of Schedule 5 to the Bill, the Competition Commission (the Commission) is to consist of not less than five members, but the upper limit of Commission members has not been specified. Taking on board the suggestion of the Bills Committee and drawing reference from the experience of overseas jurisdictions in respect of the competition law, as well as the composition of other statutory bodies in Hong Kong, we propose to amend section 2(1) of Schedule 5 to cap the total number of Commission members at 16. In other words, the number of Commission members can range from the lower limit of five to the upper limit of 16. This amendment can enhance the certainty of the likely scale of operation of the Commission.

According to section 29(1) of Schedule 5, subject to subsection (2), the Commission may delegate any of its functions to its members, the Chief Executive Officer, specified employees, and so on. Section 29(2) provides a list of non-delegable functions which relate to the core functions of the Commission that carry substantial and read-across implications. Taking into account the views of the Bills Committee, we have reviewed the powers and functions of the Commission that can be delegated under section 29 of Schedule 5. On review, we propose that several core functions of the Commission should also be included as non-delegable, including bringing proceedings, issuing an infringement notice instead of bringing proceedings, varying or revoking a block exemption order which affects a specific type of agreements, and submitting the Commission's annual report in order to be accountable to the public, and so on.

My amendments to add sections 28A and 28B to Schedule 5 are mainly proposed to address the Bills Committee's concern over the Commission's rules in respect of conflict of interest. The two provisions provide for the general rules on the disclosure of interests by members of the Commission or committees of the Commission, matters in relation to the disclosure of interests at meetings, as well as a register of interests of members of the Commission or committees of the Commission.

Besides, as in the cases of the relevant decisions under clause 34 as well as the register of block exemption orders, the two provisions specifically require the Commission to make the register of interests available for public inspection by

making use of the latest technology available including the Internet, and in any other manner as the Commission considers appropriate.

The Bills Committee has discussed the above amendments and expressed support for them. Chairman, I also know that Mr LEUNG Kwok-hung will move an amendment to section 2 of Schedule 5 to the Bill in relation to the qualifications of Commission members, which the Government considers unnecessary. I will respond in greater detail when I speak for the second time later. Thank you, Chairman.

*Proposed amendments*

**Schedule 5 (See Annex I)**

**MR LEUNG KWOK-HUNG** (in Cantonese): Chairman, I pressed the wrong button. I request a headcount. I have pressed the wrong button, can you .....

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung, it is your turn to speak now.

**MR LEUNG KWOK-HUNG** (in Cantonese): My turn to speak? I request a headcount.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): I am sorry.

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

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung, please speak.

**MR LEUNG KWOK-HUNG** (in Cantonese): Chairman, I now propose an amendment to add subsection (1A) to section 2 of Schedule 5 to the Bill as follows, "Of the members appointed under subsection (1) — (a) at least one must have expertise or experience in small and medium enterprises; and (b) at least one must have expertise or experience in consumer welfare."

Chairman, it is actually quite logical for me to add these provisions because when proposing my earlier amendment to clause 129, I have said that in my view, one of the indispensable objectives of the Competition Ordinance (the Ordinance), that is, the ultimate outcome, must be to safeguard consumer rights or enhance consumer benefits, or at least, the situation should not be worse off than before.

When speaking earlier, the Secretary has indicated that he would heed our advice. He has spoken for a long time about the number of members of the Competition Commission (the Commission). According to him, the present proposal of having five to 11 members is ultimately the best. Why should we have five to 11 members? That is just an estimate about the Commission's workload as well as the problems it might face in future. That is how the range of five to 11 members is arrived at. But why did the Secretary call on Members to be the opposition party, or to oppose my amendment in his speech? The reason is that he considers my amendment unnecessary.

Chairman, amongst Members of the Legislative Council, including those from the industrial and business sectors and the opposition Members, that is, those who oppose my amendment on behalf of the Government — please do not get me wrong — he has said that in fact, there are Members who opine that it is necessary to ensure protection for small and medium enterprises (SMEs) after the enactment of the Bill. Some Members even consider that if private actions are allowed, that is, the institution of private litigations, SMEs would be seriously threatened because big consortia can use make use of private actions to circumvent the Commission and drive out their competitors with their financial resources. That sounds correct. Perhaps they will say that it is necessary to safeguard consumer rights, which is also correct.

But those are all bluff and bluster, for which they do not have to take responsibility afterwards; "Bloody Long Hair" does not have to take responsibility — I heard somebody say "Bloody Long Hair" — all bluff and bluster, that is, those are all empty promises. Do they need to take responsibility for their words? Will they put their words into action? Generally, they would not do so. When I proposed the amendment to the long title of the Bill previously, the Secretary opposed to the suggestion, saying that it was not appropriate. So I concede. He is more vicious than me. He is the state machinery, and I am a human being. So I amend clause 129 — Secretary, make no mistake, I am not talking about the December 9 student movement — it is just clause 129. Yet he still wants a total victory and opposes my amendment to add the provisions in clause 129. Is it not appropriate that one of the Commission's objectives is to promote the benefit of consumers? His objection has no reason at all; he talks as if he is invincible, but he fails to put his words into action.

So far, of the five to 11 members of the Commission, I only propose that one member, or at least one member, must have expertise or experience in SMEs. The Commission has so much power that it is frightened by many people. When the Commission makes its decisions, how come not a single member has expertise and experience in SMEs? What will happen? Who will speak on behalf of SMEs? When the Commission makes mistakes, what will happen? I am only suggesting that there should be one member, or more than one member, who can present alternative views in the course of the Commission's deliberation, such as, saying that, "That is actually not the case. I have different views on the matter. Given my experience, I think the views held by other members are only hearsay, rumour or fabrication." I would like to ask the Secretary: Without this person, how can you ensure that the interest of SMEs would be safeguarded or their situation would not be worse off than before? Concerning this point, the Secretary has actually given his reply previously, that is, at the meeting of the Bills Committee on Competition Bill held on 20 December 2010.

The subject under discussion at that meeting was "Appointment of SME and consumer representatives as Commission members". He mentioned a lot of points in the reply. What did he say in point 11? I quote, "Regarding the appointment of consumer representatives, it is worth noting that the future Commission, unlike the United Kingdom Office of Fair Trading and the Australian Competition and Consumer Commission, will not have responsibilities over pure consumer protection issues, many of which are outside the coverage of

the Bill. Moreover, the meaning of consumer representatives is unclear, noting that everybody must have some experience of being a consumer and therefore can claim to be representing consumer interests. The resulting uncertainty is not desirable from the perspective of ensuring effective implementation of the new law. As enhancing consumer welfare is one of the intended outcomes of a competition law, the future Commission members will need to pay due regard to this aspect while performing the functions of the Commission." This is classic tautology, more or less a textbook example.

According to the Secretary, who is the consumer? Anybody can be a consumer. If we are all consumers, how can a consumer representative be selected? He then changed the subject abruptly, claiming that under the Ordinance, the future Commission members would need to pay due regard to enhancing consumer welfare while performing the functions of the Commission. That was also what he said. When he spoke this morning to oppose my amendment, he said that it was not necessary to include such a statement in the legislation that one of the objectives of the Commission was to bring benefits to consumers. It is inappropriate to include this as one of the objectives of the Commission. As Secretary Gregory SO waves his hand, the opposition charges forward and knocks me out. What is he talking about really?

Was what he said on 20 December 2010 a conspiracy or a lie? He told me shortly afterwards that it was inappropriate to state that one of the objectives of the legislation is to bring benefits to consumers. Then in answering my question about why it was not necessary to state that Commission member should have experience or expertise in SMEs or consumer welfare, he said that this should be considered an "automatic" requirement. Since members of the Commission should be so required, it was unnecessary to specify the same in the Bill. Now, here is my question to the Secretary: Given that to bring benefits to consumers is not a stated objective, how can you be so convinced that Commission members who are selected and appointed by the Government will definitely consider this aspect in their work? Why would they do so? Have you asked a forensic pathologist from Hunan Province to check it out? Is it possible to conduct a forensic analysis even after the cadaver has been destroyed?

Hence, there is really nothing I can do in this debate. Your arguments are as slippery as an eel. When your butt is caught, you retract your head; when

your head is caught, you retract your butt, just like a turtle. How can you be caught? There is nothing I can do, you are like a turtle.

Let me ask you another question. As you have already won once by deleting safeguarding consumers from the functions of the Commission, what are you talking about now? What did you say on 20 December 2010? It is now June 2012 as the UEFA European Football Championship is being held. One and a half years have gone, and what you said one and a half years ago had failed, by almost 50%, to materialize.

Chairman, my proposal is actually not my invention, right? Let me cite an example. In Switzerland, it has been specifically provided that membership of its competition commission must comprise representatives who are conversant with consumer affairs. How many members are there in its competition commission (which is similar to our so-called Commission)? There are 12 members, which is also similar to our Commission with five to 11 members. Switzerland has also specified that its competition commission must have members who are representatives from consumer bodies or organizations. That is the arrangement adopted by Switzerland. I have always been criticized for talking nonsense, but are you saying that the legislation in Switzerland is superfluous?

Examples in faraway countries, such as those in the Caribbean, are the same as they also consider that ..... In a Caribbean country, its competition commission consists of seven members who all work part-time, just like Members of the Legislative Council. I wonder where has the Member known for his remarks of "staying up day and night, night and day" gone now? There are part-time Members of the Legislature, who must be summoned to attend the meetings. The situation in the country I cite is the same, and so is Australia. In Australia, it has also been specified that at least one member of its competition commission must have knowledge about consumer protection, that is, not somebody like CHEN Ran who has no special qualification. The expertise and experience of this particular member must be substantiated with proof. Secretary, when answering my question, you said that as everybody is a consumer, how can a representative be selected? In Australia, the stated requirement is that the member must have expertise, experience and knowledge about consumer protection. I do not have such qualification, and I am just a consumer. As a consumer, I think there should be a member in the Commission

who has been involved in protecting consumer rights — Secretary, look at me — do you not know where to find such a person? There are so many former Chairmen of the Consumer Council. In the past, we always saw them on television educating the public about the pros and cons of various products, as well as issuing warnings about consumer scams, and so on. Buddy, do you really need me to teach you what to do? Do you really live in Hong Kong? Do you not know that there is a Consumer Council in Hong Kong? I think you will have a headache merely from choosing among the retirees. How many persons do you need? Buddy, you are being unreasonable. Even though I am extremely angry now, I have no energy left. You are better than Donald TSANG — you do not insist on arguing or refuting — who even dare say publicly that he does not have any gratuity. Does he not feel ashamed?

Chairman, I feel ashamed and I should stop now; or else, you will not let me continue. That is the end of my speech.

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

**DR LAM TAI-FAI** (in Cantonese): Chairman, as I have said in my previous speeches, the major content, interpretations and provisions of this Competition Bill (the Bill) are ambiguous, and have caused serious concern among us.

However, the fact in front of us is that the Bill will be endorsed. After the Bill is enacted, either the specific guidelines or amendments will be implemented by the Competition Commission (the Commission) in the future. As I have said time and again, the Commission has extensive power. It can formulate guidelines, interpretations and revise the guidelines, and it also exercises a supervisory role — by conducting investigations, instituting prosecution and taking follow-up actions. The Commission will arrogate all powers to itself, and the power is so great that is no match for many committees.

The effectiveness, efficiency and performance of the Commission will not only have a direct impact on Hong Kong's future economic development, but is also vital to the survival of small and medium enterprises (SMEs). Of course, looking from a positive angle, I also hope that the work of the Commission can be

pertinent and will practicably combat monopolization under the principle of promoting Hong Kong's economy and safeguarding consumers' interest. Yet, if anything goes wrong and the Commission fails to perform satisfactorily, Hong Kong's economy will certainly be adversely affected and SMEs will be pushed to the verge of collapse.

As a saying goes, "personnel matters means rule by man". The Commission is not a machine, it is comprised of people and each member has great power. How will the Chief Executive or future government appoint the members of the Commission? I have grave concern about this and feel gravely worried. This is because we have not touched on the composition of the Commission in the entire course of discussion, but merely agreed that the number of members should fall between five and 16, but no more than 16. There was no discussion on the number of members to be chosen from SMEs or business and industrial sectors.

I am therefore very worried that only few people from the business and industrial sectors or SMEs will be chosen to sit on the Commission. This will give rise to a scenario of professionals being led by laymen, or professionals being supervised by laymen. In view of the fact that its members lack the practical and professional business experience, do not have much knowledge about the actual situation of Hong Kong and fail to properly grasp the direction of economic development, they may often make wrong judgments and lead to unjust cases.

Although SMEs may lodge appeals, the cost is pretty high. As SMEs have usually devoted all of their time to their businesses, it is impossible for them to spare any time and effort to handle legal issues. This is what I feel gravely concerned about.

Given that the business and industrial sectors have been well developed and all trade and industries are flourishing, it is therefore not easy to identify a person who is well-versed in every trade and industry. For example, the expertise required by the retailing sector is different from that of the manufacturing sector. In fact, different sectors have their unique mode of operation, business condition and development potential, so it will be very difficult to identify a person who is well-versed in every single sector.



Therefore, I eagerly hope that when the future government appoints members of the Commission, it will comprise mainly of representatives from the business and industrial sectors.

The purpose of the Bill is to promote economic development and enhance the efficiency of enterprises. If more representatives from the business and industrial sectors are allowed to work in the Commission, they can provide good advice and formulate appropriate guidelines, thereby facilitating local economic development and bringing benefits to consumers. I therefore sincerely hope that representatives from the business and industrial sectors should make up no less than 50% of the Commission.

The amendment proposed by Mr LEUNG Kwok-hung today requests that the Commission should have at least one appointed member having the expertise or experience in SMEs. Secretary, on the face of it, his amendment seems to support my views and I should therefore be grateful to him. In fact, he is an undercover. Subscribing to the conspiracy theory, he is actually acting as a gatekeeper for the Government. Once his amendment is passed, the Commission will only have one member coming from the business and industrial sectors, which is terrible. The Government will argue that, according to Mr LEUNG Kwok-hung's amendments endorsed by Members, at least one representative from the business and industrial sectors must be chosen to sit on the Commission, and therefore only one such member will be appointed. The authorities can rightly appoint just one member from the business and industrial sectors as a "decorative vase" to keep our mouths shut.

Sometimes, I wonder if Mr LEUNG Kwok-hung is trying to be helpful or otherwise. In fact, this is attributable to his lack of knowledge about economic development. He has never run any business, but just arbitrarily proposed to include one such member in the Commission. Of the 16 Commission members, if at least one should come from the business and industrial sectors, it accounts for one sixteenth of the Commission. If the Commission has only five members — given that the number of members ranges from five to 16 — it means one fifth of the Commission. The percentage is pretty low in both cases. Under this circumstance, how can the Commission protect SMEs? How can it promote the development of the business and industrial sectors? How can it safeguard the interest of the business and industrial sectors? How can it enhance the economic efficiency of Hong Kong?

Mr LEUNG Kwok-hung, this is nothing but a disservice. I therefore will not support his amendment. Here, I would like to urge the Government to ensure that the Commission will comprise mostly of representatives from the business and industrial sectors when making the appointment, with a view to achieving the objective of the Bill.

Should the future Commission comprise mainly of lawyers, I trust that many companies will close down. Should it comprise mainly of academics, I believe the Commission will have more empty words than action.

Secretary, while I oppose the amendments proposed by Mr LEUNG Kwok-hung, I hope that you will bear my words in mind that, to safeguard the interest of SMEs and the business and industrial sectors, more people from the business and industrial sectors should be appointed to the Commission.

Chairman, I so submit.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): Chairman, after listening to the grand speech made by Dr LAM Tai-fai, I have really benefited a lot. I had run a business before, just that he knew nothing about that. I once sold snake soup outside the South China Theatre from 8 pm to 3 am every day. If there were any leftovers, I had to finish them up. Thus, I am certainly aware of the power of the market. I suffered heavy losses at that time and had to finish the soup up every day. I do understand the operational difficulties encountered by small and medium enterprises (SMEs). Do not look down on other people. I am actually a typical SME, like a "one-man business".

In fact, what Dr LAM said has its logic. What is the logic then? He assumes that the business sector shares the same aspiration, or there is an abstractive concept called "commercial interest". Like the ultraviolet light of sunshine, people who are exposed to it will have their skin colour turned brown or even black. This is certainly non-existent. In fact, the enactment of an anti-monopoly law or a competition law is precisely because of the absence of the abstract commercial interest.

We can look at the issue from two perspectives. First, it is the relations among different economies or economic zones, like the European Union versus the United States. Judging from Dr LAM Tai-fai's vision, there are certainly a lot of things which are beyond his expectation. In his eyes, there is only Hong Kong. The emergence or elevating of the competition law to such an important level is, to a certain extent, attributable to the importance which different economic zones, countries or the European Union have attached to the protection of self-interest. Some overseas consortia have, in the course of globalization, taken advantage of their financial powers and engaged in anti-competitive conduct. Something should be done about it. This is the reason why we have to make reference to the approaches adopted by different places, and why our legislation is not identical but only share something in common.

However, in the case of Hong Kong, as mentioned by Joseph YAM in discussing Hong Kong's exchange rate, our economy is small and open. Am I right, Secretary? We have a small and open economy. What kind of competition law should we have?

First of all, I think that we should deal with the anti-competitive conduct of overseas consortia in Hong Kong. What will you do? The "Seven Sisters" ..... Do you know what the "Seven Sisters" refer to? It refers to the seven oil companies engaging in monopoly pricing. The first thing they do in the morning is to fix the oil price for the day, like the promulgation of a decree by God. Dr LAM Tai-fai may not know ..... Dr LAM Tai-fai also patronizes the petrol stations, has he ever thought that the oil companies have gone too far by raising oil prices time and again?

(THE DEPUTY CHAIRMAN, MS MIRIAM LAU, took the Chair)

On this issue, Secretary Gregory SO, there is still no way to combat the collusive pricing of multinational consortia, which have made use of their market powers to prey on consumers. Please note, not many consumers are like Dr LAM Tai-fai — He does not care much about the exploitive conduct of the consortia — most consumers patronize the Kowloon Motor Bus (KMB) ..... the Government has been kind to the KMB by providing cheaper fuels to it, or they take the green mini-bus, which are operated on a small scale. When I travel on a

taxi, I notice that the taxi drivers are pretty "filial" and they said many swearing words related to one's mother. Why? Because the gas price has been monopolized through competition.

Ms Miriam LAU must be aware of this as she is the Chairman of the Legislative Council Panel on Transport. Back then, the authorities said there was a need to introduce competition. The China Petroleum and Natural Gas and the China National Petroleum Corporation, for example, are consortia from China. Although they are supposed to come and break the previous monopolistic situation, they are Mainland consortia after all. In order to introduce competition, our Government sold land to them at very low price. However, after supplying low-priced fuel for a certain period of time — I am not going to talk about the opening of only six filling nozzles when there are originally 12 of them — they have now joined hands to engage in monopoly pricing and collusive pricing by taking advantage of their market powers.

To put it simply, in my view, consumers in Hong Kong, just like Dr LAM Tai-fai who has one or two vehicles, is certainly justified to express views. Yet, it would be better if the advice is given by someone who has expertise in the sector, or has currently been engaged in the relevant sector, or has focused his study on the matter and therefore has sufficient knowledge and experience in this regard.

Secretary, do you know what I am talking about? I do not think so. I am talking about a phenomenon which you have no idea of, and that is, the occupation of our territories by overseas consortia. They have seized our market share and subsequently colluded with local consortia to form the "Seven Sisters" ..... In China, they used to trade oil but not gas in the fuel market. Of course, the gas sold by China mainly comes from Middle Asia.

The question is: What else can you do to combat this problem when such a need arises? The Secretary said that there is no need to do so. Or, as Dr LAM Tai-fai has said, the Commission should make up entirely of businessmen. This is definitely not viable. While the appointment of businessmen as representatives is necessary, it .....

**DEPUTY CHAIRMAN** (in Cantonese): Dr LAM Tai-fai, do you need to elucidate on the part of your speech which has been misunderstood?

**DR LAM TAI-FAI** (in Cantonese): I need to elucidate. When I spoke, I did not say .....

**DEPUTY CHAIRMAN** (in Cantonese): Dr LAM Tai-fai, there are procedures to follow for our meeting. Do you want to raise a point of order? Do you want to elucidate on the part of your speech which has been misunderstood? Please sit down first. You can only make elucidation after Mr LEUNG Kwok-hung finishes speaking.

**MR LEUNG KWOK-HUNG** (in Cantonese): I think that Dr LAM Tai-fai can .....

**DEPUTY CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung, please continue with your speech.

**MR LEUNG KWOK-HUNG** (in Cantonese): Fine. I would like to let him make the elucidation. Anyway, forget about it.

**DEPUTY CHAIRMAN** (in Cantonese): He cannot make the elucidation now, but has to wait until you finish with your speech.

**MR LEUNG KWOK-HUNG** (in Cantonese): Perhaps I should sit down to let him make the elucidation.

**DEPUTY CHAIRMAN** (in Cantonese): No, you cannot.

**MR LEUNG KWOK-HUNG** (in Cantonese): I am not allowed to do so.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): I am not allowed to do so. Never mind. This is not my problem, Dr LAM Tai-fai.

In short, Dr LAM Tai-fai did not say that the Commission should make up entirely of businessmen, which is true. It is just a slip of tongue. Unlike Donald TSANG, we will repent at once. Yes, I am wrong. You said that the Commission should mostly or largely make up of ..... at least a significant number ..... I suddenly feel very cold due to the low attendance. Deputy Chairman, I request a headcount.

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

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

**DEPUTY CHAIRMAN** (in Cantonese): A quorum is now present. Mr LEUNG Kwok-hung, please continue with your speech.

**MR LEUNG KWOK-HUNG** (in Cantonese): Thank you, Deputy Chairman. Why no time is displayed?

**DEPUTY CHAIRMAN** (in Cantonese): Please show the speaking time of Mr LEUNG Kwok-hung.

**MR LEUNG KWOK-HUNG** (in Cantonese): Do I need to speak all over again?

**DEPUTY CHAIRMAN** (in Cantonese): No, your remaining speaking time will be displayed.

**MR LEUNG KWOK-HUNG** (in Cantonese): I just said that judging from Dr LAM Tai-fai's vision, there is no way he can understand a very important function of the competition law, and that is, to guard against anti-competitive conduct of multinational capitalists in the jurisdiction or economic community to which we belong. Experts are therefore necessary. Although they are not the type that we desire, they are readily available.

Let me quote the remarks made by the Commissioner for Competition, who is as important as the key person of our Competition Tribunal and can be said to be an expert. He said, "I want to start by going back to some basic points which have underpinned all my work as Commissioner for Competition and which remind us of the importance of a fully functioning and active competition policy for consumer welfare. The competition policy pursued by the European Commission has a direct impact on the daily life of the citizens of the European Union."

What he meant is that the life of citizens living under the European Union is always affected by the competition policy, and he must therefore do something. Having said that, what can he do then? He must remain sensitive and vigilant. What I mean is that within the Competition Commission (the Commission), there must be at least one consumer ..... not consumer, but a person who has expertise in consumer protection and small and medium enterprises, and is also experienced. What is wrong with this suggestion? From his point of view, in the Commission, there must be some people who have the expertise or experience in running a business, and there should be more than one member who is experienced and possess the relevant knowledge. This is it. If we can identify five to 11 members and four of them possess such a quality, they will account for one fourth of the Commission. What is the problem with this? If you think this is not right, may I ask how you can include the element of stakeholder in the Commission, so as to ensure that in the course of discussion, firstly, their views can be expressed; and secondly, their views can be fully taken on board?

Concerning the Commission's operation, if black-box operation is not involved, the opinions of stakeholders should be made public. This has offered

a basis on which we can assess if the Commission has achieved the objective as claimed by the Government or the objective we want it to achieve. As in the case of broadcasting a European football match, there is no point to invite someone from the FIBA Europe to be the narrator. This is a very simple logic and a modern concept of stakeholders. At the meeting in Rome — the committee system which we are referring now originated from that meeting. How can you make a regressive move? While I am aware that the Commission is not a committee, only its Chinese name suggests that it is a committee, the Commission in fact has enforcing power; it is a knife but not a grindstone. And given that it is a knife, it must be handled with care.

Therefore, I hope that the Secretary can be so kind as to stop saying that the appointment of one or more people who have expertise or experience in consumer rights to the Commission serve no great purpose. If you think that the Commission lacks this kind of people, just identify some more people. As for consumer rights, as I have said, former staff of the Consumer Council alone will form a large pool of suitable persons.

With regard to SMEs, you may ask Mrs Sophie LEUNG or Dr Samson TAM. Dr Samson TAM, is your enterprise a SME? Yes? No, certainly not, buddy. This is bullshit. Dr Samson TAM has nonetheless nodded in agreement that his enterprise is a SME, wanting so eagerly to be a SME. So long as there is a set of yardsticks ..... Many people asked if members of the Commission will again be appointed from the functional constituencies. I do not see there is such a need. And yet, there must be a set of yardsticks, for example, the years of experiences and other requirements. Recruitment can proceed once the yardsticks are established. This is precisely what Dr Margaret NG has highlighted — I have forgotten what the yardsticks are called. The "seven major yardsticks" are the selection criteria adopted by the United Kingdom. So, just adopt the "seven major selection yardsticks", buddy. This is not an election and there is no need to organize any small-circle election. The Secretary said that not only are the suitable persons difficult to identify, their representativeness is also a question. Yet, this is only his understanding. Do I need to bring you along with me to sell snake soup in front of the South China Theatre, and try to finish five bowls of leftover snake soup in one night?

Deputy Chairman, I think the Secretary should give a response. Honestly speaking, I would consider him too irrational if he refuses to reply. Among the



many irrational guys, I am comparatively more rational. Yet, he is even worse than me.

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

**MR ALBERT CHAN** (in Cantonese): Deputy Chairman, since not many Members are present to listen to my words, I really do not have the mood to speak. I would like to invite more Members to come. May I request a headcount?

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

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

**DEPUTY CHAIRMAN** (in Cantonese): A quorum is now present. Mr Albert CHAN, please speak.

**MR ALBERT CHAN** (in Cantonese): Actually, members need not worry, because as I have told you, Members will return to the Chamber one after the other after the summoning bell has rung for 13 minutes.

Deputy Chairman, the number of members and the composition of the Competition Commission (the Commission) is actually the brain of the entire organization. If we say that the Ordinance symbolizes the spirit and the principle, then the organization structure and the composition of the Commission probably represents its brain and four limbs. An undesirable composition may give rise to a Commission which is rotten inside despite its impressive appearance, or like "foul grass out of foul vase" according to Mr LEUNG Yiu-chung. This is because the members' background, capability and attitude will likely have a decisive or, if to put it seriously, a catastrophic effect on the implementation of the Ordinance. Examples of this kind are numerous, and one

of which is the reorganization proposed by Mr LEUNG Chun-ying. He has proposed to include five Secretaries of Departments and 14 Directors of Bureaux, but the relevant name list is not only funny but also pretty terrible. The names of the candidates are confusing to members of the public, we can hardly tell if the candidate is a male or a female, and he or she has no relevant experience in the field. All the candidate can say is that he or she has sent their children to attend some courses. As such, the experience, value and status of the members are very important.

On public affairs, a person's occupation or experience in political and economic affairs often shapes his attitude, and the most simple and typical example is the Town Planning Board (TPB). Take the membership lists of the TPB in previous years, especially in the 1980s and 1990s as examples. For people who do not know much about politics, personal relationship or network, the lists contain names of reputable professionals. However, after some understanding, they gradually learnt that these professionals, or even president, chairman or senior members of certain bodies, or people who have been playing a leading role in their sector for a decade or two, are actually dedicated assistants of a particular major consortium. This is why the decisions made by the TPB always favour one or two consortia, thereby creating developer hegemony. This kind of examples are too numerous.

Therefore, the composition of the Commission also has a decisive effect on whether it can genuinely implement the Competition Ordinance in a comprehensive and effective manner for the sake of public interest and the general public. This is because over the past years, the SAR Government has agreed not to take legal action for a number of cases though sufficient evidence was available. The most typical example is the case of Sally AW. Although this has nothing to do with the Commission, it is not difficult to see that political or social ties have decided everything in many cases.

Our growing concern over the Commission to be established under the Bill is definitely related to LEUNG Chun-ying, who will soon rise to power. Before he actually takes office, he has already put up his arrogant airs and acted in a hegemonic way. It seems that everyone in this world is a slave to him, and even the Legislative Council has to listen obediently to his orders. And yet, the royalist party can only act in silent fury and work as his slaves round the clock

while excusing themselves from the Chamber. Two weeks ago, Mr WONG Kwok-hing delivered his speech in a righteous and passionate way, but in these few days, he was nowhere to be seen. Although he has undertaken in front of Hong Kong people that he would attend the meetings night and day and day and night, he has simply disappeared lately .....

**DEPUTY CHAIRMAN** (in Cantonese): Mr CHAN, please speak on the provisions and amendments.

**MR ALBERT CHAN** (in Cantonese): However, "Mr Elephant" looks well and this should be commended.

**DEPUTY CHAIRMAN** (in Cantonese): Mr CHAN, please speak on the provisions and amendments.

**MR ALBERT CHAN** (in Cantonese): Deputy Chairman, regarding the composition of the Commission under discussion, we will fully support Mr LEUNG Kwok-hung's amendments though they are less than satisfactory. If Members may recall, in the 1990s, there was a popular proposal which required that the membership of all statutory bodies be allocated to various political parties and affiliations in proportion to the share of the vote they had won in the geographical direct election held in that session. If I propose an amendment, I will also follow the same line. It is nothing but a joke for Hong Kong, under the existing political system and the small-circle election in particular, to empower Mr LEUNG Chun-ying, who was elected by a mere 698 votes, to appoint members of the Commission. He will certainly practise "affinity differentiation" when making appointments. LEUNG Chun-ying has been well-known for practicing "affinity differentiation". This is the same practice adopted by the underground Communist Party to use these young comrades as confidants.

Deputy Chairman, I request a headcount.

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

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

**DEPUTY CHAIRMAN** (in Cantonese): A quorum is now present. Mr Albert CHAN, please continue with your speech.

**MR ALBERT CHAN** (in Cantonese): Deputy Chairman, it seems that Members are not happy with my requests for headcount within 30 minutes. They said that they need to take a meal break. I also understand the importance of having meals .....

**DEPUTY CHAIRMAN** (in Cantonese): Please speak on the provisions and amendments.

**MR ALBERT CHAN** (in Cantonese): ..... Deputy Chairman, I need to make an elucidation as Members accused me of requesting a headcount. Many people also have nothing to eat. Not many people are as holy as Rev Timothy LAN, who often distributes meals to homeless people. We should better learn from him as a role model. Deputy Chairman, I hope that the Secretariat will arrange meal breaks for Members in the course of debates. This is precisely what Mr WONG Kwok-kin has requested time and again. To be fair, they should not go out for a meal when we are doing our job. Since we are equally paid, there is no reason that we have to take up all the work while they can sneak out to have meals .....

**DEPUTY CHAIRMAN** (in Cantonese): Mr CHAN, please focus your speech on the provisions and amendments. As for other views, you may express on other occasions.

**MR ALBERT CHAN** (in Cantonese): I get it. Deputy Chairman, I also wish to give a notice that I am going to request repeatedly a headcount during the meal time. If the Secretariat does not arrange meal breaks for Members, I will request a headcount when the number of Members present at the meeting is less than 20. This is my notice to Members, and so do not accuse me for not giving advance notice. *(Someone present at the meeting spoke)* I will request a headcount at any time.

Deputy Chairman, I just talked about the importance of the composition of committees and have used the TPB as an example. Over the past 20-odd years, the TPB has been tasked to draw up the Outline Zoning Plans and approve different kinds of applications, such as applications to rezone an original factory or a commercial site into a residential site; to rezone an abandoned farmland into a comprehensive redevelopment area; to rezone an oil depot into luxury apartments, or to rezone an abandoned land into a new community. All along, many changes have taken place.

Many of these applications, no matter how bizarre they are, were approved. The approval of these applications has led to the rampant building of screen-like buildings, and the building volume rate is as high as nine in some cases. It is too high for the building volume rate of residential buildings to exceed nine. While it is only five in some places, others may reach as high as nine or even slightly higher. It means that the building on each square foot of land is nine times of the floor area.

As a result, the environment of a number of communities has seriously deteriorated and professionals should know very clearly how bad they are. Prof Patrick LAU, for example, who had been the member and Vice-Chairman of the TPB as well as chairmen of certain committees, should be well-versed in town planning. If the relevant planning has been examined by so many professionals and government departments, there is no reason why no one is aware of the ventilation problem, accommodation problem and the visual impact brought about by those "screen-like buildings", which have blocked the beautiful coast or ridge lines.

Noting that their rampant growth in Hong Kong has fuelled public discontent and fury, the Government gradually developed more criteria for planning. Many criteria were not developed by members of the TPB but by the

Planning Department. From this, we can see that even government officials do not have faith in the TPB, and have formulate planning requirements by means of administrative decisions, public consultation and mass pressure. Deputy Chairman, I request a headcount.

**DEPUTY CHAIRMAN** (in Cantonese): Clerk, please ring the bell to summon Members 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 Albert CHAN, please continue with your speech.

**MR ALBERT CHAN** (in Cantonese): Chairman, members have been very time conscious, and a quorum will always be formed after the summoning bell has rung for 13 minutes.

Chairman, just now I talked about the importance of the composition of the Commission. It would be too arbitrary to rely on a government which lacks legitimacy to appoint members to the Commission, and the appointed members are not subject to any basic or statutory criteria. Basically speaking, only confidants will be appointed. Of course, this is inevitable even if criteria have been set. For example, on consumer-related issues, it can simply appoint someone who has close ties with and receive orders from the Government to deal with matters relating to consumers' rights. The best approach is therefore to, as I have suggested earlier, adopt the practice proposed by some political parties in the early 1990s. When deciding on the composition of the statutory bodies, the Government should divide the membership according to the share of votes won by various political parties and affiliations in a certain or the most recent

geographical direct election of the Legislative Council. The Democratic Alliance for the Betterment and Progress of Hong Kong, for example .....

**CHAIRMAN** (in Cantonese): Mr CHAN, you have digressed from the topic.

**MR ALBERT CHAN** (in Cantonese): Chairman, I am talking about the importance of the composition of the Commission.

**CHAIRMAN** (in Cantonese): Please focus your speech on the amendments.

**MR ALBERT CHAN** (in Cantonese): ..... I am criticizing that the amendments of "Long Hair" are unsatisfactory. I actually have a better proposal, but I have not put forward an amendment. And yet, if anyone put forward any proposal which contains the composition as suggested by me earlier, I will render active support to it. Basically, Mr LEUNG Kwok-hung's proposal is an improved option among all other undesirable options concerning composition. We will therefore support Mr LEUNG Kwok-hung's proposal.

Thank you, Chairman.

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

**MR WONG YUK-MAN** (in Cantonese): Clause 128 of the Competition Bill (the Bill) is about the establishment of the Competition Commission (the Commission). The Commission has a great deal of power; to put it simply, it is responsible for the implementation of the Bill in the future and it has the function of promoting fair competition in Hong Kong. The functions of the Commission are set out in clause 129, and its specific power is specified in various provisions of the Bill. In Schedule 5 of the Bill as currently discussed, section 2(1) in Part 2 is about the composition of the Commission, specifying that the Commission is to consist of not less than five members appointed by the Chief Executive. Section 2(2) specifies that, in considering the appointment of a

person as a member of the Commission, the Chief Executive may have regard to that person's expertise or experience in industry, commerce, economics, law, small and medium enterprises (SMEs) or public policy.

In comparison with the Public Consultation on the Detailed Proposals for a Competition Law published by the Government in 2008, section 2 basically shows a regression. The lower limit of the number of members of the Commission had been reduced from seven to five, and the expression of "at least one member of the Commission shall have experience in dealing with SME matters" as initially proposed had been removed, and revised as "in considering the appointment of a person as a member of the Commission, the Chief Executive may have regard to that person's experience in SMEs". Dr LAM Tai-fai, please listen attentively, it is very likely that the voice of any person who has experience in dealing with SME will not be heard in the Commission.

Chairman, another change is that, in section 2 in Schedule 5 of the Bill, the original expression of the person "shall have" certain experience has changed into the Chief Executive "may have regard" to that person's expertise or experience. To avoid being blamed for filibustering, I would not spend another 15 minutes talking about the differences between the words "shall", "must" and "may" as in the above expressions "shall have" and "may have regard", though you can be quite sure that I have the ability to do so. There are differences indeed; but, as you are not in a good mood today, I will omit this part lest you should say that I am filibustering, which made it impossible for the proposal on the new framework of five Secretaries of Departments and 14 Directors of Bureaux to be passed in time. Do not be afraid, for the Finance Committee will certainly give it the green light.

However, an indisputable fact is that, under section 2 in Schedule 5 of the Bill, the Chief Executive may or may not have regard to a person's relevant experience in considering the appointment of that person as a member of the Commission (I am actually very unhappy with the use of the words "作出" in the Chinese text). In other words, he may or may not consider in this direction. We know from the way section 2 is written that the Chief Executive does not have the legal responsibility to take into account a person's relevant experience in considering the appointment of that person as a member.



We constantly hear voices in the community that many public offices have basically been reduced to become political rewards. In fact, there are many people holding numerous public offices. If Honourable Members are required to attend all meetings of their public offices, I think they will suffer more than the time during our filibustering.....

**CHAIRMAN** (in Cantonese): Mr WONG, you have digressed from the subject.

**MR WONG YUK-MAN** (in Cantonese): You do not need to make such a hasty judgment on the so-called political rewards. I am just drawing an analogy; dishing our political reward is not surprising, will the Commission not turn into a kind of political reward in the future, buddy? Donald TSANG is an obvious example; I hate his feet when I see his head. Worse still, have just seen a cartoon by Cuson on the Internet .....

**CHAIRMAN** (in Cantonese): Mr WONG, you have digressed from the subject.

**MR WONG YUK-MAN** (in Cantonese): When LEUNG Chun-ying said, "Come ..... join me", the pan-democrats fell to the ground behind him. It was just kidding. That is not bad, right?

The Legislative Council needs to reflect or review if we should still allow the Chief Executive to have so much discretion in the appointment of the members of the Commission. In particular, the Commission by nature has considerable opportunities to have dealings with tycoons and large enterprises. While the credibility of the Commission is questioned because of the Chief Executive's credibility, he will appoint some people to become members of the Commission. As these people are also questioned, will two negatives make a positive? Buddy, that only happens in Mathematics. Even though you are an expert in Mathematics, two negatives will not make a positive in this case, and the situation will only become worse. The community has a price to pay if these people are appointed.

I would like to tell the Secretary that the consultation document in 2008 contained proposals on the composition of the Commission. One objective was

to eliminate SMEs' worries that the competition law might lead to rising operating costs and high litigation costs, and it might be time-consuming. I think the Secretary must have read this consultation document in 2008. He should know that there is such a consultation document, right?

Many SMEs have expressed worries in the course of the Bills Committee's deliberations. On one occasion, Dr Philip WONG, who is not in this Chamber right now, was so agitated that he pounded his fist on his desk when he was speaking. Members had no idea that he could be as "radical" as WONG Yuk-man even though both of us have the same surname. We can see that many SMEs are extremely worried. Since SMEs have so many doubts and reservations about the Bill, this change will only cause their distrust in the Government and the future Commission, which will not help promote fairness in the Hong Kong market or healthy competition.

Given that the lower limit of the number of members of the Committee has been reduced from seven to five in the Bill (the Government has proposed an amendment to set the upper limit as 16), I do not understand why, and the Government has not explained why the lower limit of the number of members of the Commission has been reduced. What was the Government's response to the questions of Bills Committee members? It stated that the way in which the Ordinance was drafted allowed the Chief Executive to flexibly appoint more Commission members after he had considered the actual operation and workload of the Commission and other related factors (such as whether there were suitable candidates for appointment).

Chairman, at the most, this explanation is only about whether it is necessary to set an upper limit for the number of members of the Commission. We will not understand from reading the provisions of the Bill how the Government's reduction of the lower limit of the number of members can achieve the objective effect of allowing the Chief Executive to flexibly appoint more Commission members, and this is a bit self-contradictory. The Government's response was: "it allowed the Chief Executive to flexibly appoint more ..... after he had considered the actual operation and workload of the Commission and other related factors"; yet, fewer members will be appointed as currently proposed.

According to the Bill or the consultation document in 2008, there was no upper limit to the number of members. Simply speaking, the Chief Executive could appoint as many members as he desired. We note that the amendment just moved by the Government proposes the addition of a provision on the upper limit of not more than 16 members to be appointed. If time allows, I can actually speak a little more at the Committee stage on the upper limit of the number of members on this basis.

I, in principle, support setting an upper limit to the number of members, and I also agree that the upper limit of the number of members should be set at 16, which will serve as an indicator. Apart from the number, the quality of people to be appointed should also be considered. Thus, Mr LEUNG Kwok-hung's amendment pinpoints people's quality or class status. For example, there was a very popular Chinese saying on the Mainland in the past: "If the father is a hero, his child will be a hero; if the father is a reactionary, his child will be a bastard". This saying about class status illustrates that a person's class status and background can be hereditary. What I am talking now are matters of the past, Chairman, you also had a hard time in those days.

It was proposed in the consultation document in 2008 that the Commission should at least have seven members. Why does the Government currently think that the actual operation and workload of the Commission is easier than that expected in 2008, on the basis of which the number of members of the Commission has been reduced? We can draw a comparison with other jurisdictions. In general, the lower limits of the number of members of corresponding units in other jurisdictions are not high. Nevertheless, we must say that the governments of these countries are mostly returned by rather democratic means. A Chief Executive has just been elected by 689 out of 1 200 persons, under the strong advocacy of "Grandpa". For appointments to be made by the Chief Executive with such a public opinion basis, the lower limit cannot be set too low. We are just providing remedies and reliefs, right? What kind of person can be appointed by a person like him? We feel scared for this reason. Hence, some often say that the lower limit of the number of members in other jurisdictions is less than that as we currently proposed; why are we arguing? Buddy, he is not LEUNG Chun-ying, he is not from an underground party, and there is no small-circle election, hand-picking or decision making by "Grandpa"  
.....

**CHAIRMAN** (in Cantonese): Mr WONG, you are repeating your argument.

**MR WONG YUK-MAN** (in Cantonese): These jurisdictions are often economies of larger scale and there are fewer cases of conflict of interests among members in these economies of larger scale. Chairman, we rarely hear the Commission being questioned for siding with large enterprises in handling the contravention of the anti-competition law. The reasons are very simple: there is no overlapping of membership or people are really more democratic and liberal. Furthermore, as these economies are of larger scale, there are fewer cases of conflict of interests among members. For example, the Enterprise Act 2002 in the United Kingdom specifies that the Office of Fair Trading shall have five members including the Chairman (*The buzzer sounded*) ..... time is up.

**DR MARGARET NG** (in Cantonese): I would like to speak briefly on the amendment. The Civic Party supports this amendment of Mr LEUNG Kwok-hung but we think that this amendment will be of no avail, as in the case of the parrot of Mountain Tuo<sup>1</sup>. Mr LEUNG seeks to add Schedule 5 to this clause, thinking that this will enable the composition of the Competition Commission (the Commission) to better meet the actual needs.

Chairman, in the course of deliberation on the Bill — this Bill has been revised many times — I had repeatedly sought the advice of an expert in this field and I had attended some seminars though I do not know much about economics and I am not very interested in it. I asked the expert for his general comments on the drafting standard of this Bill. The expert said that the drafting standard was high and its structure was pretty good. I then asked him about the key to the successful passage of this Bill and the essence of the Bill. He said, after thinking for a while, that the success or failure of the legislation hinged on the person to be appointed Chairperson of the Commission.

I think his comment, speaking out of experience, is very meaningful. As we have seen, we have debated this Bill for a few days. First, this Bill does not aim at protecting consumers' interest, so we cannot see the immediate benefits to consumers; second, this Bill will not abolish some restrictions, that is the

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<sup>1</sup> A parrot flew past Mountain Tuo and seeing that the mountain was on fire, it dipped its feather with water and tried to put out the fire. The Angel said to the parrot, "Even though you have the will, what you did serve no great purpose."

so-called deregulation; unlike telephone services where the public can immediately see the advantages upon the abolition of monopoly. The Commission should actively or passively take actions or impose controls, so as to allow orderly competition and eliminate anti-competitive activities, and thereby bring indirect benefits to consumers and enhance market competition.

Are members of the Commission, especially the Chairperson, so important in implementing such an ordinance? Let us consider the composition of the Commission, especially who will be the Chairperson. Section 8 in Schedule 5 provides that the Chairperson is one of the members of the Commission. We should consider what kind a person this member is.

Chairman, why do I mention the story of the parrot of mountain Tuo? In fact, this is not the first time that I have said so. Why have so few Members spoken on such an important issue? The most important reason is that, though we have made many comments, it is to no avail. When we discussed the West Kowloon Cultural District, we mentioned how to ensure that the appointed members ..... as you also know, irrespective of how independent we hope he is, he will surely be appointed by the Chief Executive. How can we ensure that this appointed candidate would really make efforts, and that he is not just a confidant, or someone who acts as ordered, or he gets the job as a kind of political reward? Chairman, we do not need such persons. We want to the best candidate to be appointed instead of a person who is politically correct, most "obedient and helpful". We want to add certain provisions on the eligibility of members or the appointment process, so as to ensure that such things would not happen. However, we fail every time and we also failed when we discussed the Communications Authority Bill.

Let us take a look at section 2 in Schedule 5 on the Composition of the Competition Commission. The most important point is that section 2(2) specifies that, "in considering the appointment of a person as a member of the Commission, the Chief Executive may have regard to that person's expertise or experience in industry, commerce, economics, law, small and medium enterprises or public policy". First, there is an expression "may have regard to" ..... I will not be so skeptical as to think that the use of the word "may" implies that the Chief Executive may not have regard to the points mentioned, and he may directly appoint a person without any experience. Chairman, these are not my worries. However, the way in which the section is written reflects that there is not a desirable system, and everybody can ..... even I may be suitable because I

have some legal experience and expertise. Yet, it would be disastrous if I were appointed Chairperson of the Commission. This should not be so operated.

Therefore, it is most worrying as regards who will be the Chairperson and members of the Commission. In such a political climate ..... Chairman, I do not want to have lengthy discussions on the framework of the five Secretaries of Departments and 14 Directors of Bureaux; but during the deliberation of the proposals of the Chief Executive-elect, we have mentioned some candidates who might join the Policy Bureaux to be established. Let us not say we prefer candidate A and consider that candidate B is not suitable or he has political background. If we find candidate A better than candidate B, but eventually candidate B is appointed because of his political background, we can foresee problems in the future operation. If they are members of the Government's accountability team, we can consider adopting the so-called complementary mechanism. Nonetheless, there is no complementary mechanism in the Commission.

In examining the Bill, when I consider the criteria of appointing members of the Commission, to be honest, I am really ..... I cannot say that I am worried, I can only say that I am really skeptical because I do not have that much confidence in him; yet, I cannot say that I do not want to pass this Bill; I just do not have much confidence.

There is another crucial point, if the appointed members and Chairman of the Commission are not people with a strong will, though they may be suitable for the work, they will easily be manipulated by the Chief Executive Officer, who takes up the post as a job, and the factor of government interference is also involved. Hence, the operation of the Commission will be affected.

As evident from the case of the Chairman of the Legal Aid Services Council and the Director of Legal Aid, we can see that one of them is a government official while the other is a member of the public who has been appointed. Whether or not the structure can operate in an independent and effective manner depends on what kind of person the appointed member is. Chairman, the candidates are very important but I do not have much confidence in these members.

Mr LEUNG Kwok-hung's amendment aims to improve the composition of the Commission. It will not be enough even if there are members with expertise

in SMEs and consumer welfare — Chairman, I have no doubt that the future Chief Executive will certainly appoint people with such background.

Chairman, originally I did not intend to speak, especially when we already have a lengthy debate. Since we have discussed so much about this Bill but not much has been said on this issue, I believe we need to put on record that the persons to be selected are very important. I hope that the future legislation will be much improved, such as the appointment and selection systems will be modernized. As such, we need not be skeptical and suspicious about the kind of persons to be appointed, as the success or failure of the whole system depends on the right persons to be appointed. 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, let I will see if there are other Member who wish to speak before calling upon you to speak again. Does any other Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung, you may now speak again.

**MR LEUNG KWOK-HUNG** (in Cantonese): Chairman, I have learnt a lot from the comments of other Honourable colleagues. First of all, Dr LAM Tai-fai has described me as an undercover agent or a character in the movie "Infernal Affairs" because I have proposed an amendment asking for the appointment of at least one member with expertise or experience in small and medium enterprises (SMEs), and at least one member with expertise or experience in consumer welfare. He thinks that this would give the Government an excuse because by saying that it has followed the advice of the Legislative Council, it could make

the appointment; that is, at least one member must have expertise or experience in SMEs; and at least one member must have expertise of experience in consumer welfare. The Government can then well justify its acts. However, Dr Margaret NG holds exactly the opposite views and she compares me to the parrot of Mountain Tuo.

This amendment that I proposed reflects the political reality that the Government cannot give Members of this Council confidence in enacting a related legislation, and it cannot make us believe that the legislation is rational to a certain extent. Even though the legislation is rational to a certain extent, the Government is using the rationality to cover up some irrationalities of greater significance.

Given that I know nothing about the competition law, why have I proposed this amendment?

Mr WONG Yuk-man has wrongly blamed Secretary Gregory SO, he is, like an alien, not familiar with his duties and he has only filled the vacancy because the former Secretary has fallen ill. After he has filled the vacancy, he has to carry out the tasks authorized by the Government.

Have I fabricated anything? On 20 December 2010, the Secretary ..... I am not sure whether Secretary Gregory SO was already the Secretary at that time. I think he was not and I am not sure if he has already filled the vacancy of the Secretary. He said, "the future Commission, unlike the United Kingdom Office of Fair Trading and the Australian Competition and Consumer Commission .....", but he has not stated the differences.

He added a footnote but I am not sure if Secretary Gregory SO has asked his subordinate to write this expression: "will not have responsibilities over pure consumer protection issues, many of which are outside the coverage of the Bill". This expression is really remarkable. Have I said that the Commission must protect consumers like what the Consumer Council is doing? I have just said that the ultimate objective of benefiting consumers should be achieved. My amendment is about promoting sustainable competition so that economic development will benefit from competition. This is my conclusion.



Is that also the case in overseas countries? I believe the Office of Fair Trading in the United Kingdom is not simply established to look after consumer interests as the Government has said. I would like to give an example. Under the Competition Law 1998 — I am just quoting — a department is specially set up under the Office of Fair Trading to conduct investigation and assessment on the situation of the United Kingdom market but investigation is different from the formal investigation conducted by the Office of Fair Trading on suspected unlawful acts under its terms of reference. Evidently, the Office of Fair Trading has the function of conducting investigation into the market in order to understand the market situation .....

**CHAIRMAN** (in Cantonese): How is the remark that you are giving related to the composition of the Commission?

**MR LEUNG KWOK-HUNG** (in Cantonese): It is related to the Secretary's response to my remarks. He has opposing views and he has lobbied Members to vote against my amendment. I .....

**CHAIRMAN** (in Cantonese): How is the information that you just cited related to the provision being discussed?

**MR LEUNG KWOK-HUNG** (in Cantonese): It is related because the Secretary's response is erroneous. How can we support something erroneous? Is that right? Perhaps it is not directly relevant but a person who has given an erroneous response should give an explanation and convince us that he has not given an erroneous response or he is only half wrong. Is it related? If it is not related to this Bill .....

**CHAIRMAN** (in Cantonese): From what I have heard, I cannot tell how the information you have just cited is related to your defense of your amendment.

**MR LEUNG KWOK-HUNG** (in Cantonese): It is related because the Secretary is trying to lobby Members not to support my amendment. If what the Secretary said in the past or what he is saying today is inconsistent with the facts or contains wrongful interpretation, it will affect the Secretary's persuasiveness. Interests will be attributed to me if his persuasiveness is affected. When interests are attributed to me .....

**CHAIRMAN** (in Cantonese): From what I have heard, I cannot tell how the information you have just cited is related to what the Secretary has just said.

**MR LEUNG KWOK-HUNG** (in Cantonese): It is related because the Secretary has said, "the future Commission, unlike the United Kingdom Office of Fair Trading ....." — to save time, I am not going to read aloud "the Australian Competition and Consumer Commission" as they are irrelevant. As you have rightly stated, it "will not have responsibilities over pure consumer protection issues". He has said that the Office of Fair Trading will not have responsibilities over pure consumer protection issues, and I have attempted to illustrate that the Office attaches great importance to the work. What? Oh yes!

If the Secretary gave a wrong answer to my question at the meeting of the Bills Committee on 20 December 2010, there is no reason why his views today would be correct. This is my opinion and this is an indirect argument. If you think that I should not use this method of argument, I will not use then. I respect you and I will use another method .....

**CHAIRMAN** (in Cantonese): Please focus your remarks on your amendment or the original provision in Schedule 5.

**MR LEUNG KWOK-HUNG** (in Cantonese): I see. The Secretary has pointed out that "consumer" is a broad concept. He has also said .....

**CHAIRMAN** (in Cantonese): Mr LEUNG, please focus your remarks on the provision being discussed now. In this session, the Committee has a debate on

the original provision in Schedule 5 and your amendment. The Secretary may have expressed a lot of views on the Competition Bill and you need not analyse all the arguments made by the Secretary.

**MR LEUNG KWOK-HUNG** (in Cantonese): I see. Let me talk about the number of members again. It is horrifying to talk about the number of members. Am I requesting a headcount or am I discussing the number of members of the Commission? There is one way in which I can clarify what he just said. I will request a headcount first.

I really have nothing to say, and I thought that he was talking about the number of members of the Commission .....

**CHAIRMAN** (in Cantonese): Clerk, please ring the bell to summon Members 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): Chairman, in opposing my amendment, the Secretary's argument is that it is difficult to determine the meaning of consumers. That is why he has opposing views. If everybody claims that they are consumers, how can we determine who can represent consumers? That is a problem. How can this problem be solved? I think measures suited to local conditions and the time should be adopted. As the Secretary has commented, we have another statutory body in Hong Kong for the protection of consumer interests. Take the Consumer Council as an example, it is inappropriate for those working in the Consumer Council to concurrently work in other consumer protection bodies. However, those who have left office or those who previously took charge of research work, such as the Chief Executive or members of the committees set up by the Consumer Council .....

**CHAIRMAN** (in Cantonese): Mr LEUNG, you have already made this point, please do not repeat yourself.

**MR LEUNG KWOK-HUNG** (in Cantonese): Alright. I think the Secretary cannot convince me on this point.

Regarding who should represent SMEs, as there is not a body for the protection of SME interests in Hong Kong, it is more difficult to find SME representatives. I personally think that, concerning the number of members of the Commission ..... do not worry about the number of persons ..... we must first set the upper and lower limits of the number of members of the Commission and make provisions for the composition of the Commission or proportion of members from various sectors before determining who should represent SMEs or consumers. This is also my response to Dr Margaret NG's comment that I am the parrot of Mountain Tuo and Dr LAM Tai-fai's comment that my suggestion amounts to nothing. I did not want SMEs and consumers to be respectively represented by one member. We should be able to solve this problem if the Government upholds social justice or has listened to our discussions in the legislative process. After specifying the number of members representing consumers and SMEs, I think a system for the selection of these members may be developed; which is better than allowing the Chief Executive to make the decision basing on his own views.

Chairman, I have taken someone else's job into my hands and asked for provisions to be made to protect the interests of SMEs and consumers. Nevertheless, I have to give way again and again, and I can only suggest the addition of at least one stakeholder representative in the Commission. This gives me a deep impression that the existing political and legal systems are extremely unreasonable. There are functional constituencies in our system because it is said that, without functional constituencies, we will not be able to group together various functional constituencies in our society in an elected legislature, and the legislature will not have fair and balanced development. Nonetheless, why is this representation not found in the Commission having far-reaching impacts on Hong Kong? Why are members selected at random? Why do we not take essential remedial measures within the Commission? Besides providing for the composition of the Commission, the number of members should be divided into three equal parts according to three main

principles (promoting sustainable competition, enhancing economic efficiency and enhancing the benefits of consumers) without distinction of any kind. If five to 16 members are divided into three equal parts, there will respectively be more than one member representing consumers and SMEs. This is my response to Dr LAM Tai-fai's comments.

I think I have nothing more to say. You often say that I am repeating what I have said, and I really think that I am repeating what I have already said.

**MS CYD HO** (in Cantonese): The SAR Government today is not as tolerant as the SAR Government under Mr TUNG. When Mr TUNG dealt with legislating under Article 23 of the Basic Law in 2003, even though his efforts ended up in a sorry plight, the relationship between the Government and the Legislative Council; that is, the relationship between the executive authorities and the legislature, was smoother than that of today. Why have I said so? It is because there were two bills to be passed on 9 July 2003, including the Betting Duty (Amendment) Bill 2003 and the Bill on legislating under Article 23 of the Basic Law, but the latter was finally withdrawn.

The objective of the Betting Duty (Amendment) Bill 2003 was to regulate soccer betting and the Hong Kong Jockey Club has been designated as the operator of soccer betting. Regarding the composition of the Football Betting and Lotteries Commission proposed to be established, I proposed an amendment as requested by the Society for Truth and Light and some others against gambling. It was specified that three of the community members should meet the following requirements: first, they should be teachers with educational background; second, they should be social workers; third, they should have religious background. The definitions can be easily made because reference should just be made to the composition of functional constituencies. The Government almost accepted the amendment I proposed immediately, separate voting was not required as my amendment was included in the Government's amendment. At the time, the relationship between the Government and the legislature was much smoother and both parties could base our discussion on facts.

Mr LEUNG Kwok-hung's amendment has not asked for an increase or decrease in the number of members and it only has two additional requirements:

first, the member should have expertise or experience in small and medium enterprises (SMEs); but Members from the business sector have often criticized that this Bill fails to look after SMEs. We should support Mr LEUNG Kwok-hung's amendment based on our previous discussions. Second, the member should have expertise or experience in consumer welfare. If government officials are ready for negotiation, the member may become an ex officio member; in that case, the Chairman of the Consumer Council will certainly become the Chairperson of the Competition Commission (the Commission). There are precedents for these provisions or practices and I can give another example. There are a few ex officio members among the members of the Judicial Officers Recommendation Commission. For example, there are the presidents of two professional bodies and the Secretary for Justice. The authorities can inject the relevant experience into the structure through these post holders.

I strongly agree that the number of members is not a factor contributing to success or failure for quality is the key to success or failure. However, the requirements concerning quality can hardly be expressed in wordings. As regards the most common expression of "fit and proper" in other laws, it comprises the element that the person concerned is not bankrupt or mentally incapacitated. How can we express in wordings the quality of high integrity and prestige in this Ordinance? I have just asked another Member about an English wording that I fail to translate. How can we include in this Ordinance the Chinese equivalent of the word "decent"? The appointed person must be decent, and the Chief Executive exercising the right of appointment should also be decent, honourable and trustworthy; the public will then trust and accept the person he has chosen.

Let us consider the candidates for the Chairman of the Equal Opportunities Commission (EOC), and we will fully understand the importance of suitable candidates. This issue is not only related to the system and it also involves who is working under the system. When Ms Anna WU was the Chairman of the EOC, the EOC had the respect and trust of the community. As we have noticed, the EOC has been reduced to a laughing stock and its credibility has suffered a drastic decline since the appointment of Mr Michael WANG. The EOC has regained the community's confidence after two years' hard work by LAM Woon-kwong since his appointment. However, whether or not the Chief

Executive exercising the right of appointment acts decently and properly is not directly related to whether he is returned by direct election.

Chairman, even if there is a one-person, one-vote direct election, someone who seems less pleasing to the eye may be elected. There are quite a number of examples in foreign countries showing that people who acted in quite outrageous ways might be elected. The Chief Executive returned by direct election will only be accountable to the community under a certain system, but there is no quality assurance as to whether all those he appointed within his term of office are suitable, decent and proper. In particular, the present recruitment process of Under Secretaries by the Chief Executive-elect is utterly immoral. The recruitment board has made public the time and place of the interview and allowed phototaking by the media. This is just like the case of the recruitment of financial analysts where the applicants are first asked to take out two life insurance policies or sign two investment agreements. He has already used these candidates to make news for him before their appointment. How can we expect such a Chief Executive to appoint people who have the trust of the public?

As Dr Margaret NG has just mentioned, we should explore if an express provision can be included in the future ordinance. Dr Margaret NG is proficient in the Chinese and English languages and she has examined various kinds of ordinances throughout the years, I believe it must be very difficult for an express provision to be included in the future ordinance because even she finds it necessary to explore the matter. Nevertheless, when the political and cultural areas and the quality of a person participating in politics are involved, I believe the ordinance cannot meet the relevant requirements. Conversely, we should rely on the earnest cultural quality enhancement of our society. Yet, it is most unfortunate that, as I have just mentioned, can the problem be solved even if there is a one-person, one-vote election? The problem may not be solved even if the Chief Executive is elected by one-person, one-vote; and it is even harder to solve the problem concerning these appointed persons. We cannot request for an election for each of the positions in each body and structure, whether it is a statutory, non-statutory or advisory body and whether or not it has real power. There are so many advisory and statutory bodies, and it will be confusing for an election to be held for each position. Even if an election will be held, it is not hard for us to see from the kind of election as that of Arts Development Council with specific background classes that the elected persons may not be satisfactory.

Perhaps they will just represent certain interest groups and they cannot place public interests above the interests of the groups.

Chairman, I certainly support Mr LEUNG Kwok-hung's amendment because he has included additional requirements and background within such an impractical and board scope. Nonetheless, the accurate qualifications that these requirements and background involve may not help ensure that the Commission will handle matters fairly, and it may not help it truly act for the sake and the target of the welfare of consumers. Finally, I must say that the cultural quality of our society should be enhanced before more satisfactory achievements can be made in this regard.

**DR LAM TAI-FAI** (in Cantonese): Chairman, Dr Margaret NG has just said that she did not intend to speak, but she must speak for record purpose. I share her line of thought, and hence, I must voice my views.

Mr LEUNG Kwok-hung has just cited his experience of buying snake soup outside a theatre and his amendment is proposed rashly. I think he regards this serious legislation as kid's stuff and I find such a crude approach unacceptable. Dr Margaret NG has just used "parrot of Mountain Tuo" to describe his behaviour and approach. I believe it is not easy for many people to understand this Buddhist story used to describe his behaviour and action, and I think this description is not very appropriate.

If there is only one member in person the Competition Commission (the Commission) who has expertise or experience in SMEs, I think the number is grossly inadequate. I always advocate that more than a half of the members should have the expertise or experience in this area, so that they can help in promoting our economic development and ensuring the sustainable development of SMEs. So, I do not want to criticize again that Mr LEUNG Kwok-hung has behaved as if he is an undercover agent but I am sure that he is doing something bad though he is well-intentioned, and he will meet with more failures than successes, getting SMEs into trouble.

However, I hope Mr LEUNG Kwok-hung and the Secretary would take my suggestion into consideration. Mr LEUNG Kwok-hung has commented that it is very hard to find SME representatives, which is incorrect and it proves that he is not very clear about the situation of SMEs in Hong Kong. He does not



understand that many talented people from SMEs are willing to serve the community. When the authorities wish to recruit or appoint people as members of the Commission, I suggest that they should consider asking the four major business associations or some large SME federations or SME federations with a long history to recommend candidates. For example, the Chinese Manufacturers' Association of Hong Kong, the Chinese General Chamber of Commerce, the Federation of Hong Kong Industries and the Hong Kong Small and Medium Enterprises Association can recommend candidates for consideration by the authorities. It is very easy to identify more than a half of the members of the Commission, and I believe this composition is balanced and extensive. I believe the four major business associations and a few large SME federations include most trades in Hong Kong, and they understand the development of local enterprises and the related trend, as well as the difficulties faced by enterprises. They also clearly understand what are markets, market power and all the worries. When the Commission intends to formulate or amend guidelines, it will certainly have the assistance of talents, and it will not need to seek help from laymen who may fail to see the whole picture. When the guidelines are tabled before the Legislative Council, we will be consulted and we will express our opposition. Just now, we passed the provision that the Commission only needs to consult the Legislative Council on its proposals and the approval of this Council is not necessary. The Legislative Council cannot play a gate-keeping role and it cannot conduct effective monitoring; and it can only listen to views and give advice.

Therefore, when the Commission submits the guidelines to the Legislative Council in future for our reference or to seek our advice, the quality of members of the Commission is of great impact. Do they understand the economic situation in Hong Kong or are they committed in going the work. Why do I persistent oppose to Mr LEUNG Kwok-hung's amendment? It is because I am really worried that, if his amendment is passed, the Government will only appoint one person with expertise in SMEs to become a member of the Commission, and that person will only act as a shield and a vase. I believe that more than a half of the members of the Commission should come from the business sector or SMEs; thus I hope that Mr LEUNG Kwok-hung will not speak again after I have finished speaking. If he speaks again, I have to speak again because he is just saying empty words without substance and he is filibustering. I hope that he would stop speaking.

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

**MR ALBERT CHAN** (in Cantonese): Chairman, this should be the last time that I speak on the amendment to avoid being accused by others for filibustering. As Members have heard, our remarks have substance and there are many examples pointing out the shortcomings or deficiencies of the Bill.

Chairman, I will speak very briefly for less than five minutes this time. I want to point out a very serious problem that Members may have too much trust in the Government when they examine the Bill for they have accepted that there should be no less than five members. I understand that it may be consist of five to 16 members. We also consider it acceptable to have 16 members or more than 10 members. Upon its establishment, this Competition Commission (the Commission) may only have eight or 10 members and it may eventually have only five members because of the subsequent resignation of some members or other reasons. Or, the Government may have only appointed five members for some special reasons. Chairman, let us consider the quorum for a meeting of the Commission; as stated in section 13(1) in Part 4, "The quorum for a meeting of the Commission is a majority of its members." If it has five members, a quorum is present when there are three members, only Do-Re-Mi. Can Members imagine how bad the situation will be?

I would like to ask Honourable colleagues to make reference to the Building Management Ordinance which specifies that the number of members in an owners' corporation depends on the number of units in a building. For instance, there shall be no less than five members for a building with 100 units, seven for a building with over 100 units and nine for a building with over 1 000 units. As specified in the Ordinance, the number of members in an owners' corporation shall not be less than a specific number but there are the same provisions for the meetings. In other words, if the number of members in an owners' corporation is based on the units in a building; for example, there shall be seven members for a building with more than 100 and less than 1 000 units, the number of members attending meeting shall not be less than seven. This is a very important point because this is the minimum requirement. If there are five members and only a half of them are needed to be present at a meeting; that is, three members will be enough, this will seem like kid's stuff.

This is a deficiency of the Bill and I cannot rectify at this stage. Nevertheless, I hope the Government will take administrative measures to ensure that the situation I just described will not emerge because the design of the Bill is really crude and the problems are serious. The Government would not admit that but we should consider why the requirements for the composition of the Commission and the number of members are not as stringent as those for owners' corporation, and why is the regulation even worse than that of the owners of a building? Thus, I really hope the Secretary would later explain at the Third Reading or when he responds. The Government can make a verbal commitment as what it did in the past; that is, the number of persons must ..... though it is specified in the Ordinance that there shall not be less than five members, in practical or future operation, the best arrangement will be no less than nine members because a half of nine members amounts to five members. This will ensure that the quorum for a meeting of the Commission will not be less than five members; it will be too bad if there are only five members present at a meeting. We all know that the members are very busy and many of them are holding many public offices as WONG Yuk-man has mentioned. Yet, if the actual number of members at a meeting is less than five, there will be criticisms and even scandals if they make major decisions. Thank you, Chairman.

**MS AUDREY EU** (in Cantonese): Chairman, I would like to respond briefly to the remarks of the two Members earlier.

The first Member is Dr LAM Tai-fai. He criticized the amendment proposed by Mr LEUNG Kwok-hung as a "disservice out of good intention". I then listened in what way is it a "disservice out of good intention". Dr LAM Tai-fai considers that at least half of the members on the Competition Commission (the Commission) should have SMEs background or expertise. Chairman, I have listened to him for a long time, but I do not quite understand, so I rise to speak.

First, if Dr LAM Tai-fai considers that at least half of the members of the Commission should have the expertise in SMEs, he should put forth an amendment to this effect, but he has not done so. He is the representative on this front, he is an expert in this area and he has been so concerned about this issue. He often criticizes the Government and blames it for ignoring SMEs. In considering the Commission, he should first ..... If he is so concerned about this

Bill, he should put forth the amendment in his own capacity. However, he has not done so. This is the first point I do not understand.

The second point I do not understand is that Mr LEUNG Kwok-hung's amendment does not limit the number of such member at one or stipulates that only one such member can be included. His amendment proposes that members appointed by the Competition Commission should at least include one member with expertise in SMEs. Since Dr LAM Tai-fai considers that representatives with expertise in SMEs should be included, and it is most desirable that they take up half the number of seats, there should be no problem with the proposal of having "at least one" member. Chairman, you are good at mathematics. There should be no conflict between the number of "at least one" and "more than half", for "at least one" member may refer to half or more than half of the total members. If so, why does Dr LAM Tai-fai oppose the amendment?

They are obviously heading towards the same direction. While Mr LEUNG Kwok-hung says that there should at least be one such member, Mr LAM opines that the more, the better. If so, he should stand up with great enthusiasm to support Mr LEUNG Kwok-hung. He should clap and shout, "Mr LEUNG Kwok-hung, that is great. Fortunately, you have put forth this amendment for us. Originally, I have thought of proposing an amendment to require as many members as possible, however, I have been so busy that I do not have time to draft the amendment. So, it is fortunate that Mr LEUNG Kwok-hung has proposed the amendment of having 'at least one' such member. I will definitely agree with having 'at least one' such member".

Chairman, from the perspective of mathematics, "at least one" is better than "zero" by all accounts. If this issue has never been raised and if Mr LEUNG Kwok-hung's amendment has failed to be passed, it will provide an excuse for the Government. By then, the Government will ..... Dr LAM Tai-fai, I think you will still be a Member in the next term. If anything goes wrong, the Government will point its finger at Dr LAM Tai-fai and says, "Mr LEUNG Kwok-hung had proposed the amendment of including 'at least one' such member, but you opposed it back then, so we will not appoint any representative of SMEs to the Commission."

Dr LAM Tai-fai, do not be self-contradictory. If the Government challenges him with this cause in future, it would be undesirable. I do not intend

to speak at first, but I eventually find it necessary to do so. Why? For I have to remind Dr LAM Tai-fai, and I fear the Government may challenge him against this in future. Therefore, he really has to think about it. This is the last opportunity. He may support the amendment of Mr LEUNG Kwok-hung, for the proposal of having "at least one" member is in line with his request of having "not less than half" of such members.

On the contrary, if Dr LAM Tai-fai opposes his amendment, he is slapping his own face, this is self-contradictory and inconsistent. So, I suggest that ..... perhaps it is already late, it is nine o'clock at night. He has been sitting in this Chamber for a long time today and his brain is probably not responding well. Therefore, I have to remind him now that this is indeed the right direction. Mr LEUNG Kwok-hung's direction is the same as his, they both support SMEs. As such, I hope Dr LAM Tai-fai will think about this carefully. I do not know when the amendment will be put to vote, yet it is already late, I think I must remind him about this.

Regarding the expertise in SMEs, Dr LAM Tai-fai said in his earlier speech that there was no need to argue about this, and that many people did not know there were many experts in SMEs who had been enthusiastic in serving the community and so there would be a large pool of experts in the sector. We are certainly glad to know this. We understand that SMEs, like members in other sectors, are very enthusiastic, and they are eager to serve the community with their expertise.

He suggested earlier that the four major business associations might recommend the candidates. Mr LAM, I cannot agree with you more. Actually, it is not contradictory to the amendment proposed by Mr LEUNG Kwok-hung. If he agrees with the amendment that "at least one must have expertise ..... in small and medium enterprises", he may express to the Secretary after the passage of the amendment the method to identify persons with such expertise. It is the best and the simplest method to leave it to the four major business associations to recommend and nominate their representatives and then to be appointed by the Government. This is the agreed established practice. This approach is good. It sounds reasonable to me. Therefore, if he supports Mr LEUNG Kwok-hung's amendment, and I also speak in support of his idea, he may strive for this with the Secretary after the amendment is passed.

By then, he may check the debate recorded in the Hansard, I am referring to speeches of Members who have spoken but not Members absent. I believe Mr LAM knows that I am often present at the meeting though many are often absent, and I have been listening to speeches of Members all along. If Members who have spoken share his views, he may use this to bargain with the Secretary by saying that, "Since the amendment has been passed, the candidates to be appointed should be representatives recommended by the four major business organizations." He may then tell the sector that, "You see how good the functional constituency is, I have successfully strived for the nomination of representatives to the Commission by the four major business associations."

If he speaks again to indicate that it is more desirable that nominations are not only made by the four major business associations and more members can be appointed via other channels, I may as well support him. Mr LAM, by then, we will be able to strive for one more seat. Though it is stated in the amendment that there should be "at least one" such member, it is allowed to have many more members. There is no problem with this. If he continues to put forth similar proposals, and we consider the proposals reasonable, we will continue to render our support.

Chairman, I want to clarify one more point. Regarding the earlier remarks from Ms Cyd HO, I would like to respond briefly. She mentioned another legislation relating to the recommendation of candidates for judges made by the Judicial Officers Recommendation Commission (JORC). She cited an example and said that the chairmen of the two lawyers' associations — the Hong Kong Bar Association (Bar Association) and The Law Society of Hong Kong (Law Society) — are members of the JORC. In fact, this is not the case, and the President and the Chairman of the two lawyers' associations are not ex-officio members.

This is an agreed and established practice. It is also mentioned in law that in general, the membership of that commission includes a representative each appointed or designated by the Bar Association and the Law Society and recommended to the JORC. This practice has been adopted for many years. In the past, it was not called the JORC but another name. However, it has been an agreed and established practice for the Bar Association and the Law Society to each recommend a representative to join the commission. The ex-officio members on the JORC also include the Chief Judge, where judges from the Court of Appeal are also included in addition to the Chief Justice of the Final Court of

Appeal. The Chief Executive may appoint three other public officers to the commission. The composition approach of having specified organizations to recommend or appoint members to the commission may serve as a reference.

Moreover, Ms Cyd HO mentioned in her earlier speech the other part of the amendment proposed by Mr LEUNG Kwok-hung, which is about the inclusion of at least one member with expertise in consumers' welfare. Ms Cyd HO said earlier that the recommendation may be made by the Consumer Council, and I think this is a very good suggestion. In fact, various members in society have been appointed to the Consumer Council. These persons have been involved in the work of the Consumer Council and have gained experience on this front. This is particularly desirable for the Consumer Council has been responding proactively to the work on the Competition Bill and has put forth many views. I believe if the amendment of Mr LEUNG Kwok-hung is passed, we may allow the Consumer Council to recommend a candidate to the Commission, yet it may not necessarily be the Chairman of the Consumer Council, for they may not necessarily recommend the Chairman. That is why I have to point out that the members on the JORC may not necessarily be the Chairman of the Bar Association or the President of the Law Society, and a representative may be recommended or nominated by the two lawyers' associations to be appointed to the JORC in his or her individual capacity. By the same token, under the proposal of including one member with expertise in consumer welfare in Mr LEUNG Kwok-hung's amendment, the member may be a candidate recommended by the Consumer Council or the Government in consultation with the Consumer Council and be appointed to the Commission in his or her individual capacity. This is a possible approach.

Certainly, there are many other alternatives. I think the suggestions put forth by Dr LAM Tai-fai are quite good. I believe a number of Members of the Legislative Council may have other opinions. Chairman, in my view, Mr LEUNG Kwok-hung's amendment has left much room for members in society and Members of the Legislative Council to express their opinions, so that the Government will know the type of persons it should appoint to the Commission.

Moreover, I would like to respond briefly to the earlier remarks from Ms Cyd HO. She said that in appointing members to various committees, some elements which the Government considered important, such as the social status and reputation of the candidates, could not be stipulated in the legislation. She mentioned the aspiration of appointing a decent person — Ms Cyd HO used the

word "decent" earlier — she asked how these elements could be worded in the legal context and be included in the legislation.

Chairman, her speech reminds me of the time many years ago when I was not yet a Member. Back then, I was the Chairman of the Bar Association. I had to come to the Legislative Council to attend hearings, as those frequently held at present, to give our views. At that time, the Government was considering amending the Legal Practitioners Ordinance (Cap. 159), for the Queen's Counsels, so-called prior to the reunification, had to be renamed as Senior Counsels after the reunification. One of the issues it had to deal with was the legalization of the appointment, which meant it had to lay down the qualification for Senior Counsels. One of the considerations was the recognition of the counsel in the sector, which is equivalent to the element of reputation mentioned earlier by Ms Cyd HO. I recalled that when I gave our views at the Legislative Council at that time, someone asked how this should be worded in the legislation. At that time, I told the Legislative Council on behalf of the Bar Association that in the profession of barristers, there was no guarantee that barristers with vast legal knowledge or good at handling lawsuits would become Senior Counsels, or Queen's Counsel at the time, and it depended mainly on whether or not the persons enjoyed high prestige and commanded great respect. Back then, I made the analogy with in martial arts fictions that not everyone excelled in martial arts was a justice fighter, and the person's status in the arena really depended on his or her virtue. This is one of the criteria.

If Members go through the provisions relating to the appointment of Senior Counsels in Cap. 159, they would notice the word "standing" is used in the English text and "聲望" in the Chinese text. It is evident that this element can be included in the law. Over all these years, the Chief Justice has been following this legislation in considering the appointment of Senior Counsels. The appointment will not only consider the capability and the legal knowledge of the candidates but also the "standing" of the candidate in the sector. Hence, I would like to respond specifically to Ms Cyd HO that when the Government intends to appoint any person to any organizations, it will consider the ethics of the persons concerned. In addition to the phrase "fit and proper" mentioned by Ms Cyd HO earlier, there are many other expressions, which can be found in the existing legislation.



I would like to say a few words about the most important issue, which is the appointment of the Chairperson as mentioned by Dr Margaret NG in her speech. Regarding the appointment of members to advisory institutes by the Chief Executive or the head of regions, certain criteria or standard have been recognized by the international community. In fact, the Legislative Council has mentioned this repeatedly, and this is the so-called Nolan Principles. Certain principles are so important that they are recognized universally and by society as the required qualification or criteria for being appointed to advisory committees.

The SAR Government has frequently been criticized for cronyism. More often than not, the same group of people is appointed to various organizations or institutes. Some candidates have obviously violated the "Six committees-six years principle, yet they are still being appointed. Very often, we will see the familiar faces from a few selected political parties. The Civic Party is in an unfavourable circumstance in this respect. However, this may be an advantage. I often think that it may not be a loss to us. To some people, it may be good to get such appointments. However, in my view, the frequent appointment by the Government to certain advisory institutes may not necessarily be a good issue, for if you are in the minority, you cannot bring your influence to full play. In other words, it is unworthy to take up the appointments. Indeed, one can still offer his views when he is not on the committee, and the views so offered may be accorded greater impartiality and recognition in society.

With these remarks, Chairman, I support the amendment of Mr LEUNG Kwok-hung.

**CHAIRMAN** (in Cantonese): Dr LAM Tai-fai, this is the third time you speak.

**DR LAM TAI-FAI** (in Cantonese): Chairman, usually, when my lawyer completes the work assigned, he will issue a demand note to me. When I receive the demand note, I will draw a lot of lines on it to delete as many charge items as possible. By then, the lawyer will say, "LAM Tai-fai, I am not as good as you when it comes to money." I do so for I know that lawyers will often propose higher charges in anticipation of my deletion.

The proposal of including "at least one" such member is comparable to the minimum wage. When the minimum wage is set at the hourly rate of \$28, enterprises will rarely offer \$29 or \$30. These enterprises consider that the hourly \$28 is unbearable, and if they have to pay \$29 or \$30, it is certain that these enterprises can no longer maintain their businesses. Regarding the requirement of "at least one", I certainly understand that two or three such members is greater in number than "at least one". It is no different from the rationale that I know a mother is a woman. I disagree with the requirement of having "at least one" such member, for I worry and does not trust the Government in the enactment of legislation, though others may trust so.

I want to point out that if the amendment of Mr LEUNG Kwok-hung is passed, that is when the requirement of having "at least one" such member is approved, the Government will have ample justification in giving only one seat on the Commission to the industrial and business sectors. It will then consider that the requirement of having "at least one" such member has been fulfilled, for it is not required that three, four, five or six such members should be included. Based on this rationale and foundation, I do not accept the requirement of having "at least one" such member. It is neither because my mathematics is as poor as Members imagine, nor that I do not understand the logic as Members suggested.

Thank you, I so submit.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): Chairman, I would like explain further. Perhaps I am giving people an impression that I am uneducated and talking gibberish. In fact, had you listened carefully, you would have noticed the insights in my remarks. The Competition Commission (the Commission) should be composed of at least five members, am I right? In my amendment, I propose that there should be at least one member for each of the two types of expertise among the five members, which means two fifth of the membership. If one member has the expertise in consumer welfare, and if one has the expertise in small and medium enterprises (SMEs), it will made up two fifth of the membership. It may even be three fifth of the membership, for the amendment states that it is "at least", not less than one. If the Government starts at a

membership of five, the total will made up two fifth to three fifth of the membership, am I right? If the authorities decide to increase the membership to 16 members, the principle of proportionality should apply. In other words, the reference of the so-called "at least" should be increased accordingly as the organization expands.

In fact, in clause 129 ..... Do not suppose I am deviating from the theme. I am only explaining the rationale of my design. In the phrase I propose to add, "in accordance with the objective of enhancing economic efficiency and thus the benefit of consumers through promoting sustainable competition", I have given regard to three elements. Definitely, sustainable development should not be achieved at the expense of the interests of SMEs. Therefore, it should be divided into three elements, one is consumers, another is SMEs and the last one is "Big Masters" — they are different from the two previous ones, for the interests involved are different and the concerns are different. Really, this is my detailed design. I have spent two minutes to design it. I pencil the design by drawing a line here and a line there.

On this issue, I think if the Government is sincere in heeding the views of Members, it should seriously consider making compromise. Chairman, I do know that resurrection is impossible today. Just like JIANG Zemin, even if he comes forward today, he would not be able to speak. However, I believe in you. I believe you would see from the record of the debate in the legislature that many Members have expressed their choice of going to heaven or down to hell when resurrection is impossible. Death is inevitable. However, some people will go to heaven and others will go to hell.

Today, in this Council, you heard Members views, except those who have not spoken, and I think ..... Dr LAM Tai-fai from the business sector has expressed that more than half of the members should be from the business sector. He is not referring to representatives of SMEs but representatives of the business sector, which naturally include SMEs. Do you accept this view? In future, the appointment of members by the Chief Executive to the Commission must be based on certain justification. Among the representatives of justice in Hong Kong, this Council is empowered by the Basic Law, for better or worse, and Members are representatives returned by election. Apart from throwing things, they will speak. Yet, will you listen to them? Regarding the debate today, Chairman, you may not understand why these speeches seem to be repetitive.

We know for sure that this will probably be the result. However, we hope that in the course of canvassing votes and mustering support from Members for not voting for the amendment, the legislature will serve as a platform for the expression of various opinions and tapping collective wisdom, even though .....

**CHAIRMAN** (in Cantonese): Mr LEUNG, I understand what you are saying, and I understand that you are repeating. This is the fourth time you speak, so please do not repeat.

**MR LEUNG KWOK-HUNG** (in Cantonese): ..... it does not matter. You can stop me at anytime. I am only trying to play the "mediator", for the remarks of Dr LAM Tai-fai ..... He said one day that I did not know it. In fact, it is not that I do not know, but I wish to offer a stepping stone for Members to discuss the issue. I know that this amendment will not be passed, yet under the primary duty of a Member, I would like to put forth a relatively reasonable approach in handling the issue, which is similar to the approach adopted by organizations set up for competition law in the mainstream international community.

Chairman, I would like to thank you for allowing me to speak.

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

**MR WONG YUK-MAN** (in Cantonese): Chairman, in my previous speech, I mentioned the minimum number of members on the Competition Commission (the Commission), the appointment arrangement in other jurisdictions and the higher credibility of Commission appointed by the executive authority, and I have talked about the situation in the United Kingdom.

According to the Enterprise Act of the United Kingdom, the Office of Fair Trading should at least have five members, including the Chairman, and this requirement is stipulated in section 1 of the Schedule to the Enterprise Act. In Singapore, the Competition Act enacted in 2004 stipulates that the composition of the Competition Commission shall consist of two to 16 members, not including the Chairman. These examples cited by me have indeed provided an excuse for

the authorities, for the minimum number of members of the commissions in these countries is set a very low level.

In Australia, the Trade Practice Act (TPA) was promulgated as early as 1974. The TPA does not stipulate the number of members to be included in the Australian Competition and Consumer Commission (ACCC), and it only requires that the Chairman and members of the Commission should be appointed by the Governor-General. However, according to the TPA of Australia, Associate Members appointed by the Treasurer are included on the Commission, which offers a solution to the problem of small membership of the ACCC. On the other hand, the TPA stipulates that divisions may be set up under the ACCC, where specific requirements on the establishment and operation of a division have been included in section 19. It is stipulated that the Chairman of the ACCC .....

**CHAIRMAN** (in Cantonese): Mr WONG, in what ways are the materials you read related to the provisions and the amendments?

**MR WONG YUK-MAN** (in Cantonese): I have almost finished reading. I only want to state that the concern of the Government relating to the availability of suitable candidates in consideration of other factors is a fact. Hong Kong is a small place. Though people with expertise and experience in the following aspects, and I quote the wording of the original provision that "in industry, commerce, economics, law, small and medium enterprises or public policy", are not in the lack, at issue is that they have labyrinthine relationship with the business sector, large enterprises in particular, and are involved in many conflicts of interest or potential conflicts of interest. It is no easy task to find entirely independent individuals with the relevant expertise and experience to be members of the Competition Commission.

As in the case relating to the West Kowloon reclamation, the assessor is after all a professor, no matter good or bad. Besides, another person is involved in the assessment. Buddy, he has access to confidential information of the SAR Government, he is the boss of a surveying company, and yet he is the assessor. Chairman, what kind of appointment is this? Is this not scaring? Rightly for

this reason, the Select Committee is formed, and we have been working like a dog  
.....

**CHAIRMAN** (in Cantonese): Mr WONG, you have deviated from the subject?

**MR WONG YUK-MAN** (in Cantonese): Chairman, I have not. The authorities say that the members should be persons with expertise and experience in industry, commerce, economics, law, small and medium enterprises or public policy; am I right? However, I do not trust them and I have to query them now. As such, Mr LEUNG Kwok-hung proposes to help the Government in the selection by stating in the legislation that at least one member must have the expertise in SMEs and at least one member must have the experience in consumer welfare. How am I deviating from the subject then?

The authorities have presented it nicely, yet it is not stipulated in the legislation. It only states ambiguously that members will be appointed by him, so it may lead to ..... Therefore, I am right to cite the case on West Kowloon Development as an example. It is not my concern that he will soon be the Chief Executive. I do not think this will make him more powerful, and he is after all under the investigation of this Council, though this so-called investigation will end in vain. We cannot disclose the information for the Chairman of the Select Committee is here and this is a matter of confidentiality. We will talk about this later. What I mean to say is that the arrangement will arouse suspicion. Certainly, this is not related to our investigation. I must declare it here, otherwise, the Chairman of the Select Committee, Mr IP Kwok-him, will lecture me shortly, for we are not allowed to disclose certain information.

The arrangement will definitely prompt queries. Unless the persons appointed are prudent and impartial, and are recognized as reliable in society, and that they declare any conflict of interests strictly according to the procedure, or they are doom to failure — Chairman, I am not talking about you but the Commission. Yet, this should not be used as an excuse for reducing the minimum number of members on the Commission. So far, there is no problem of failing to identify suitable candidates to fill the vacancies in major advisory boards, statutory organizations and regulatory authorities of the Government, the

authorities manage to stuff certain persons into certain positions and some people are serving several committees at the same time.

Therefore, the legislation should stipulate the areas from which the members should be identified. Yet Members would have noticed from the reality that it is difficult to do so. If that is the case, should we be more cautious? The power of appointment is vested in the Chief Executive. As for the next Chief Executive, I do not trust him anyway.

It is true that suitable candidates cannot be found easily. Yet, Chairman, our gravest concern, which is of utmost importance, is that the Competition Ordinance is a sword hanging over the heads of SMEs but it is a "toothless tiger" to large enterprises and plutocrats, so we must prevent the Competition Commission from tilting towards large enterprises. It is possible that certain people may be remotely related to the fields — they certainly have CV (curriculum vitae). The authorities should be very cautious in appointing these people if they intend to do so.

Mr Albert CHAN mentioned the required number of members earlier. There is a problem of identifying suitable candidates, particularly in the present political ambient in Hong Kong. Buddy, some members of the Democratic Party dare to apply for the posts of Under Secretary, and it is evident that the ethics and order in politics are in a mess. How can we trust them then? For instance, when agenda items related to large enterprises are discussed at the Commission, certain members may have to withdraw from the meeting on the grounds of conflicts of interest.

No provision on the handling of conflicts of interest of members of the Commission is included in the Competition Bill. Section 32 of Part 9 of Schedule 5 empowers the Commission to make rules. In case Members cannot find that section, I will read that out. Section 32 of Part 9 of Schedule 5 empowers the Commission to make rules regarding the so-called conflict of interest. Since some members may have to withdraw because of conflict of interest, the number of members participating in the discussion of certain issues at the Competition Commission will reduce further. The small membership simply gets smaller. From another perspective, this explains why the Government had proposed a membership of seven for the Commission in the consultation paper in

the beginning. Regrettably, for some unknown reasons, these proposals have been amended in the Bill.

Moreover, I would like to give supplementary explanation to Part 7A of Schedule 5 in the amendment, which is about section 28A on the "Register of Interest". Under section 28A(1), the requirements concerning the disclosure of interest by members of the Commission and members of the committees established by the Commission are appropriate. In general, the provisions are relatively comprehensive, for these do not only include the requirement on disclosure on the member's first appointment, but more importantly the disclosure when the member becomes aware of the existence of an interest not previously disclosed. In paragraph (e), it is required that, "after the occurrence of any change to an interest previously disclosed under this subsection", disclosure has to be made according to section 28A(2). This is a kind of remedy.

Section 28A(2) is about the class of interest to be disclosed, and it is said in paragraph (b) that, "determine the details of the interest required to be disclosed and the manner in which such interest is to be disclosed; and" — the Chinese text is very unclear — and in paragraph (c), it says that the above requirement will be changed from time to time. Regarding these descriptions about the Register of Interest under section 28A, Secretary, we consider the requirement under section 28A(2) a bit lax in view of the relevant incidents, such as the West Kowloon case.

Since members of the Commission are required to have expertise and experience in the fields we mentioned earlier, namely, industry, commerce, economics, law, small and medium enterprises or public policy, more often than not, they may have labyrinthine relationship with the industrial and business sector or large enterprises. Moreover, certain enterprises are involved in an extensive range of businesses. The plutocrats in Hong Kong, like LI Ka-shing, do not only engage in the sale of coffins and funeral parlour services, they are involved in nearly every business, and they will be somehow related. Therefore, the requirements made by the Commission under section 28A(2) are unclear, Chairman, it is possible that individual members of the Commission cannot make an allegation on required disclosure of interest. It will be a problem.

As the appointment of members to committees established under the Commission is relatively lax, the disclosure of interest of these members is particularly crucial. Given the well-developed people's intelligence and the free



flow of information in society today, the public will impose extremely strict requirements on the conduct of public officers. The Chief Executive is the only one being so slow in learning that his practices have fallen short of the expectation of the public. This is called slow learner, man. The public imposes extremely strict standard on the conduct of public officers. We do not hope that the work of the Commission or the committees established under the commission will be restricted in future due to the ambiguity of section 28A.

Moreover, according to the requirement in section 28A(5), the aforesaid disclosure should be made "(a) at the offices of the Commission during ordinary business hours; (b) through the Internet or a similar electronic network; and (c) in any other manner the Commission considers appropriate." We consider it very important to make public such disclosures. Take the Chief Executive as an example. When he assumes office, he has to declare his property to the justice of the Court of Final Appeal. However, if the disclosure is not for public inspection, the declaration may deprive the public of the opportunity to check whether or not the Chief Executive is honest and law-abiding. Therefore, we consider that amendment to section 28A(5) is appropriate and necessary.

Moreover, section 28B is similar to section 28A — I only have one more paragraph to say and my speech will come to close. I mainly want to say that the composition of the Commission is related to the so-called Register of Interest or the declaration of interest, as well as the number and nature of members. Section 28B and section 28A are similar. The difference lies in the requirement of the disclosure of interest by the members of the Commission at the discussion of any matter. We consider that section 28B is complementary to the requirements in section 28A. However, we think there is some problem with section 28B(2)(c).

This provision states clearly that "the member ..... if so required by the majority of the other members present, withdraw from the meeting during the discussion and must not in any case, except as otherwise determined by the majority of the other members present, vote on any resolution concerning the matter under the discussion or be counted for the purpose of establishing the existence of a quorum." This requirement is made out of the concern of the small number of members on the Commission, and all their appointment are reinstated by the Chief Executive, which mean they are not directly accountable to the public theoretically speaking.

We do not understand why members with a conflict of interest in the matter under discussion may still engage in the discussion concerned. We think that no matter the other members agree or not, they should not continue engaging in the discussion and vote on any motion. In appointing members to the Commission, the Chief Executive must consider the potential conflict of interest of these members in fulfilling their duties, for it is a matter of the register of interest. This has supplemented ..... In discussing the composition of Competition Commission (*The buzzer sounded*) .....

Thank you, Chairman.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): Chairman, please do a headcount.

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

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

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Commerce and Economic Development, do you wish to speak again?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Chairman, the Government opposes the amendment proposed by Mr LEUNG Kwok-hung to section 2 of Schedule 5 of the Competition Bill, which is about the composition of the Competition Commission (the Commission). Mr

LEUNG Kwok-hung proposes the amendment to impose two additional conditions to the composition of the Commission, requiring that at least one member of the Commission must have the expertise or experience in SMEs, and at least one member must have the expertise and experience of consumer welfare. We consider the amendment unnecessary.

It is the policy intent of the Government to appoint persons with expertise and experience in SMEs to the Commission, so that the Commission will be able to give regard to the views and concerns of local SMEs in enforcing the new legislation in future, thereby assisting SMEs to comply with the legislation. We have set out in section 2(2) of Schedule 5 that in addition to the regard in the person's expertise or experience in industry, commerce, economics, law or public policy, the Chief Executive may have regard to the expertise and experience of the person's expertise in small and medium enterprises. The existing provisions have clearly reflected the policy intent of the Government in this respect and have given regard to the need to provide for adequate flexibility under the appointment system of the Commission, where a balance has been struck between the two. Hence, we consider it unnecessary to impose an additional requirement that at least one member of the Commission must have the expertise or experience in SMEs.

The other part of Mr LEUNG's amendment requires the appointment of a person with expertise or experience in consumer welfare as a member of the Commission. Since everyone has once been a consumer and may claim to be representing the benefit of consumers, this has rendered the definition of the representative of consumers ambiguous. This ambiguity is not conducive to the appointment procedure or ensuring the smooth implementation of the new legislation.

For the abovementioned reasons, I implore Members to oppose the amendment proposed by Mr LEUNG. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Commerce and Economic Development be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendments passed.

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung, you may now move your amendment.

**MR LEUNG KWOK-HUNG** (in Cantonese): Chairman, I move that Schedule 5 be further amended.

*Proposed amendment*

**Schedule 5 (see Annex I)**

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr LEUNG Kwok-hung be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr LEUNG Kwok-hung rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG, Ms Miriam LAU, Mr Paul CHAN and Mr CHEUNG Kwok-che voted for the amendments.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Mr Timothy FOK, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou voted against the amendments.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendments.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Mr CHAN Hak-kan and Mr WONG Kwok-kin voted against the amendments.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 18 were present, four were in favour of the amendments and 14

against them; while among the Members returned by geographical constituencies through direct elections, 20 were present, 14 were in favour of the amendments and five against them. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

**CLERK** (in Cantonese): Schedule 5 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That Schedule 5 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

**COMPETITION BILL**

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, the

Competition Bill

has passed through the Committee stage with amendments. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Competition Bill be read the Third time and do pass.

Before I invite Members to speak, I wish to estimate the time we will spend on the debate.

According to the statistics collected by the Legislative Council Secretariat, due to Members' requests for a headcount in today's meeting, approximately two hours four minutes were lost in the entire day on ringing the summoning bell to wait for a quorum. This morning, I made a proposal to Members, asking Members to consider adopting measures to recover the time lost on waiting. However, as a prior discussion has not been made, I estimate that a number of Members may not accept my proposal to extend the meeting for two more hours. Hence, I will save this proposal for future consideration.

However, just now, a Member has suggested me to extend today's meeting for half an hour. My view is that if the upcoming debate is very long, it will not be very meaningful to extend the meeting for half an hour to 10.30 pm. Hence, I wish to seek Members' views on this proposal. Will those Members who intend to speak in the Third Reading debate please raise their hands, so that I can make a projection.

(Members raised their hands in indication)

**PRESIDENT** (in Cantonese): I note that Mr Ronny TONG, Mr Fred LI, Mr Albert CHAN and Mr Andrew LEUNG have indicated their wish to speak. Is

there any Member who opposes that the meeting be suspended after these four Members have spoken?

**MR LEUNG KWOK-HUNG** (in Cantonese): I agree.

**PRESIDENT** (in Cantonese): I note that some Members are shaking their heads in opposition. Then, we will suspend the meeting at around 10 pm. I now invite Members to speak. Does any Member wish to speak?

**MR ALBERT CHAN** (in Cantonese): President, I will be brief. I will finish in one minute.

Basically, People Power .....

**DR LAM TAI-FAI** (in Cantonese): He speaks again? This is outrageous.

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

**MR ALBERT CHAN** (in Cantonese): The President let me speak, but Dr LAM Tai-fai asked me to shut up.

President, basically, we have already expressed our views when the Second Reading debate was resumed and when we spoke on other people's amendments. Our view is that the Bill is afflicted with all ills, which in the end will become a "toothless tiger", and the composition of the Competition Commission lacks public acceptance and representativeness. Hence, People Power will vote in abstention. I have only spoken for 34 seconds.

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



**MR RONNY TONG** (in Cantonese): President, I simply wish to say that the democratic camp has followed up the Bill for 10-odd years. At this moment, I believe we are overwhelmed with emotions. Nevertheless, I wish to say that competition represents the fighting spirit of the Hong Kong people. I hope that if the Bill can be passed, the Legislative Council will continue to monitor the enforcement of the Ordinance and strive to promote the culture of competition in Hong Kong. Thank you, President.

**MR FRED LI** (in Cantonese): President, ever since 1993, the Democratic Party and I have followed up the Bill. Hence, it is worth all the work. Let me make a joke by saying that the Bill is not without teeth, just that it has periodontitis; as a result, its teeth are weak and not strong enough to chew hard food. However, I think this is at least a starting point. I believe the Secretary will remain in office and thus he will have five more years. I hope that when the Competition Commission and the Competition Tribunal are established, the Secretary will have accumulated sufficient experience to expeditiously conduct a review and regularly come to the Legislative Council to brief us on the enforcement of the Competition Ordinance.

The Democratic Party supports the Competition Bill.

**MR ANDREW LEUNG** (in Cantonese): President, I will speak briefly. It has almost been two years during which the Bills Committee had done a lot of work and had overcome many difficulties to make it possible for the Competition Bill to reach its Third Reading today.

I just wish to say that this Bill, if enacted, will be something new to Hong Kong; many of its provisions are modelled on the competition law in the United Kingdom and Australia, but these economies have their own different development in competition law.

I hope the Secretary can properly establish the Competition Commission, (the Commission) prudently formulate the guidelines and in the meantime, conduct sound consultations to listen to and adopt views of the public and the stakeholders such as small and medium enterprises (SMEs); he should also conduct regular reviews on the guidelines.

The constitution of the Commission should have a balanced, rather than biased, representation. Its members should come from different sectors, including SMEs, consumers and legal practitioners, rather than just coming from the academia and legal sector. It should also put more efforts into promotion and education. The Competition Tribunal should conduct investigations in a fair, open and impartial manner and allow sufficient transparency to facilitate public right to information.

In respect of training of professionals, I believe apart from Mr TONG, there are very few professionals in Hong Kong who specialize in competition law. I hope the Government can attract and train more talents to join the Commission. Moreover, I also hope that the Secretary will regularly review the threshold for the *de minimis* arrangements.

With these remarks, President, I so submit. Economic Synergy supports the Third Reading of the Bill.

**DR LAM TAI-FAI** (in Cantonese): President, I support the Legislative Council in regulating irregularities in the market because I agree that there is such a need. However, so many of the clauses in the Competition Bill are unclear that I will have to vote in abstention. I have reservation about the Bill because it has deviated from its original intent of the legislation, which is to combat monopoly and regulate large consortia.

However, as matters stand, I believe the Bill will be passed today. I only hope that the authorities will exercise prudence in enforcing the law. Particularly in respect of the constitution of the Competition Commission, I hope the Government can adopt my proposal, that is, over half of the members should come from the commercial and industrial sectors or small and medium enterprises, so as to avoid having outsiders regulating insiders, which will incur substantial economic loss to Hong Kong.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Competition Bill be read the Third time and do pass. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr Albert CHAN rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou voted for the motion.

Ms Miriam LAU, Dr LAM Tai-fai, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 37 Members present, 31 were in favour of the motion and five abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

**CLERK** (in Cantonese): Competition Bill.

#### **SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): I now suspend the meeting until 9 am tomorrow.

*Suspended accordingly at four minutes past Ten o'clock.*

**Annex I**

## Competition Bill

**Committee Stage**Amendments moved by the Secretary for Commerce and Economic Development

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

the Communications Authority Ordinance (Cap. 616);

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

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

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

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

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

**Note—**

See also subsection (2).”.

2

By adding—

“(2) For the purposes of the definition of “serious anti-competitive conduct”—

“bid-rigging” (圍標) means—

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

controlled by any one or more of  
the parties to the agreement;

“goods” (貨品) includes real property;

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

“supply” (供應)—

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

(b) in relation to services, means sell, rent or  
otherwise provide the services or offer so  
to provide the services.

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

6 By deleting subclause (2).

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

7 By adding—

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

10 By deleting subclause (1) and substituting—

“(1) Before making a decision on an application



made under section 9, the Commission must—

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

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

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

14 By adding—

“(2A) The notice referred to in subsection (2) must be published—

- (a) through the Internet or a similar electronic network; and
- (b) in any other manner the Commission

considers appropriate.”.

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

affected by it, publish notice of the proposed variation or revocation—

- (i) through the Internet or a similar electronic network; and
  - (ii) in any other manner the Commission considers appropriate; and
- (b) consider any representations about the proposed variation or revocation that are made to the Commission.”.

21 By adding—

“(2A) Without limiting the matters that may be taken into account in determining whether an undertaking has a substantial degree of market power in a market, the following matters may be taken into consideration in any such determination—

- (a) the market share of the undertaking;
- (b) the undertaking’s power to make pricing and other decisions;
- (c) any barriers to entry to competitors into the relevant market; and
- (d) any other relevant matters specified in the guidelines issued under section 35 for the purposes of this paragraph.”.

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

22 By adding—

“(3) If conduct has more than one effect, it has the effect of preventing, restricting or distorting competition under

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

- 25 By deleting subclause (1) and substituting—
- “(1) Before making a decision on an application made under section 24, the Commission must—
- (a) in order to bring the application to the attention of those the Commission considers likely to be affected by the decision, publish notice of the application—
    - (i) through the Internet or a similar electronic network; and
    - (ii) in any other manner the Commission considers appropriate; and
  - (b) consider any representations about the application that are made to the Commission.”.
- 27(2) By adding “to the extent of the second conduct rule or this Part, and” after “only”.
- 27(2) In the Chinese text, by deleting “凡” and substituting “如”.
- 29(2) In the Chinese text, by deleting “取消決定” and substituting “取消任何決定”.
- 29(2)(a) By deleting “give notice in writing in any manner it considers appropriate for bringing the proposed rescission to the attention of

those undertakings it considers likely to be affected by the proposed rescission” and substituting “in order to bring the proposed rescission to the attention of those undertakings the Commission considers likely to be affected by it, publish notice of the proposed rescission”.

- 29 By adding—
- “(2A) The notice referred to in subsection (2) must be published—
- (a) through the Internet or a similar electronic network; and
- (b) in any other manner the Commission considers appropriate.”.
- 29(3) By deleting “a notice” and substituting “the notice published”.
- 29(3) By deleting “given” and substituting “published”.
- 29(4)(a) By deleting “given” and substituting “published”.
- 29(7) In the Chinese text, by adding “的” before “生效”.
- 33(2) In the Chinese text, by adding “藉決議通過” before “修訂該命令”.
- 33(3) In the Chinese text, by deleting “屆會期” and substituting “會期”.
- 33(5) In the Chinese text, by deleting “屆會期” and substituting “會期”.
- 34 By deleting subclause (3) and substituting—
- “(3) The Commission must make the register available for inspection by any person—

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

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

35 By deleting subclause (5) and substituting—

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

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

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

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

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

tending to establish or negate the matter.

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

- 39(1)(c) By adding “or the Tribunal” before “has”.
- 41(2)(a) In the Chinese text, by deleting “複本” and substituting “副本”.
- 45 By deleting subclause (2) and substituting—
- “(2) No statement made by a person—
- (a) in giving any explanation or further particulars about a document; or
- (b) in answering any question,
- under this Division is admissible against that person in proceedings referred to in subsection (3) unless, in the proceedings, evidence relating to the statement is adduced, or a question relating to it is asked, by that person or on that person’s behalf.”.
- 48 By renumbering the clause as clause 48(1).
- 48(1) By adding “authorizing a person specified in the warrant, and any other persons who may be necessary to assist in the execution of the warrant,” after “warrant”.
- 48 By adding—
- “(2) A warrant under subsection (1) may be issued subject to any conditions specified in it that apply to the warrant itself or to any further authorization under it (whether granted under its terms or any provision of this Ordinance).”.

- 50(1) By deleting “named” and substituting “specified”.
- 50 By deleting subclauses (2) and (3).
- 53(1)(a) In the Chinese text, by deleting “後果” and substituting “實情”.
- 56(2) In the Chinese text, by deleting “並非” and substituting “在其他情況下”.
- 56 In the Chinese text, by deleting subclause (3) and substituting—  
“(3) 在競委會發給上述核證副本之前，該會須在該會認為適當的時間及地點，容許在其他情況下對該文件享有管有權的人或該人所授權的人，查閱和複製該文件，或摘錄其內容。”.
- 56(4) In the Chinese text, by deleting “法庭” and substituting “法院”.
- New By adding—  
**“57A. Legal professional privilege**  
(1) Subject to subsection (2), this Part does not affect any claims, rights or entitlements that would, but for this Part, arise on the ground of legal professional privilege.  
(2) Subsection (1) does not affect any requirement under this Ordinance to disclose the name and address of a client of a counsel or solicitor.”.
- 58(3) By adding “the Legislative Council and” after “consult”.
- 58 By deleting subclause (4) and substituting—



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

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

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

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

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

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

59 By adding—

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

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

- 63 By deleting subclause (3) and substituting—
- “(3) The Commission must make the register available for inspection by any person—
- (a) at the offices of the Commission during ordinary business hours;
  - (b) through the Internet or a similar electronic network; and
  - (c) in any other manner the Commission considers appropriate.”.

66 By deleting subclause (1) and substituting—

“(1) Subsection (2) applies where—

    - (a) the Commission has reasonable cause to believe that—
      - (i) a contravention of the first conduct rule has occurred and the contravention involves serious anti-competitive conduct; or
      - (ii) a contravention of the second conduct rule has occurred; and
    - (b) the Commission has not yet brought proceedings in the Tribunal in respect of the contravention.”.

66(3) By deleting paragraph (a).

66 By adding—

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

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

“—

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

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

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

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

78 By deleting the definition of “Commission”.

80 By deleting subclause (3) and substituting—

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

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

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

New In Part 4, by adding—

**“Division 4—Warning Notices**

**80A. Warning notices**

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

- (a) a contravention of the first conduct rule has occurred; and
- (b) the contravention does not involve serious anti-competitive conduct,

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

(2) A warning notice must—

- (a) describe the conduct (the “contravening conduct”) that is alleged to constitute the contravention;
- (b) identify the undertaking (the “contravening undertaking”) that has engaged in the contravening conduct;
- (c) identify the evidence or other materials that the Commission relies on in support of its allegations;
- (d) state—
  - (i) that the Commission requires the contravening undertaking to cease the contravening conduct within the period (the “warning period”) specified in the notice, and not to repeat that conduct after the warning period;
  - (ii) that, if the contravening conduct continues after the expiry of the warning period, the Commission

may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct; and

(iii) that, if the contravening undertaking repeats the contravening conduct after the expiry of the warning period, the Commission may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct and the repeated conduct; and

(e) indicate the manner in which the contravening undertaking may cease the contravening conduct.

(3) In determining the warning period, the Commission must have regard to the amount of time which the contravening undertaking is likely to require to cease the contravening conduct.

(4) After the expiry of the warning period—

(a) if the Commission has reasonable cause to believe that the contravening conduct continues after the expiry, the Commission may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct; and

(b) if the Commission has reasonable cause to believe that the contravening

undertaking repeats the contravening conduct after the expiry, the Commission may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct and the repeated conduct.

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

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

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

81 In the definition of “reviewable determination”, by adding—

“(ba) a decision relating to the issue of a block exemption order, made by the Commission under section 15;

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

84 By deleting subclause (3) and substituting—

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

(a) determine the question stated;

(b) amend the case or require the Tribunal to amend the case in any manner the Court specifies; or

- (c) remit the case to the Tribunal for reconsideration in the light of the decision of the Court.”.

91 By deleting subclause (3) and substituting—

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

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

91 By deleting subclause (4) and substituting—

“(4) In this section—

“turnover” (營業額) means the total gross revenues of an undertaking obtained in Hong Kong;

“year” (年度) means the financial year of an undertaking or, if the undertaking does not have a financial year, a calendar year.”.

92(3) In the Chinese text, by deleting “請。” and substituting “請，”.

94(1) In the Chinese text, by deleting “開支或” and substituting “開支

及”。

- 99(2)(b) By adding “or provisional liquidator” after “liquidator”.
- 101(2)(c) In the Chinese text, by deleting “該人” and substituting “某人”.
- 104 In the definition of “follow-on action”, by deleting “108(1);” and substituting “108(1).”.
- 104 By deleting the definition of “stand-alone action”.
- 106 By deleting everything after “if” and substituting—  
“—  
(a) the cause of action is the defendant’s contravention, or involvement in a contravention, of a conduct rule; or  
(b) the proceedings are founded on more than one cause of action and any of the causes of action is the defendant’s contravention, or involvement in a contravention, of a conduct rule.”.
- 108 By deleting subclauses (2) and (3) and substituting—  
“(2) Subject to section 115, a claim to which this section applies may only be made in proceedings brought in the Tribunal, whether or not the cause of action is solely the defendant’s contravention, or involvement in a contravention, of a conduct rule.”.
- 108(4) By adding—



- “(ab) the Court of First Instance has decided, in any proceedings transferred to it by the Tribunal under section 115A(3), that the act is a contravention of a conduct rule;”.
- 108(4)(b) By adding “or the Court of First Instance” after “Tribunal”.
- 108(4)(c) By deleting “and” and substituting “or”.
- 109(1) By deleting paragraph (a) and substituting—
- “(a) in the case of a decision of the Tribunal, the period during which an appeal may be made to the Court of Appeal under section 153;
- (ab) in the case of a decision of the Court of First Instance, the period during which an appeal may be made to the Court of Appeal; and”.
- 109(1) By adding “, (ab)” after “paragraph (a)”.
- 109 By deleting subclause (2) and substituting—
- “(2) Despite subsection (1), the Court of First Instance or the Tribunal may, on the application of the party seeking to bring the proceedings, permit proceedings for a follow-on action to be brought within any period specified in subsection (1).”.
- Part 7 By deleting Division 3.
- 114 By deleting the clause.
- 115 By deleting the clause and substituting—

**“115. Transfer of proceedings from  
Court of First Instance  
to Tribunal**

(1) Subject to subsection (2), the Court of First Instance must transfer to the Tribunal so much of the proceedings before the Court that are within the jurisdiction of the Tribunal.

(2) Subsection (1) does not apply to any proceedings that—

- (a) are within the jurisdiction of the Tribunal under section 141(1)(f); and
- (b) the Court of First Instance considers should not, in the interests of justice, be transferred to the Tribunal.

(3) Without limiting subsection (1) but subject to section 115B(2), if, in any proceedings before the Court of First Instance, a contravention, or involvement in a contravention, of a conduct rule is alleged as a defence, the Court must, in respect of the allegation, transfer to the Tribunal so much of those proceedings that are within the jurisdiction of the Tribunal.

(4) The practice and procedure of the Tribunal apply to the proceedings transferred by the Court of First Instance under subsection (1) or (3).

**115A. Transfer of proceedings from  
Tribunal to Court of  
First Instance**

(1) The Tribunal must transfer to the Court of First Instance so much of the proceedings brought in the Tribunal that are within the jurisdiction of the Court but are not within the jurisdiction of the Tribunal.

(2) Subject to subsection (1), the Tribunal may transfer to the Court of First Instance any proceedings brought in the Tribunal but only if—

- (a) those proceedings are within the jurisdiction of the Tribunal under section 141(1)(f); and
- (b) the Tribunal considers that those proceedings should, in the interests of justice, be transferred to the Court.

(3) If the Court of First Instance transfers any proceedings to the Tribunal under section 115(3), the Tribunal may transfer back to the Court so much of those proceedings that the Tribunal considers should, in the interests of justice, be transferred back to the Court.

(4) The practice and procedure of the Court of First Instance apply to the proceedings transferred by the Tribunal under subsection (1), (2) or (3).

**115B. No further transfer of proceedings from Court of First Instance to Tribunal**

(1) If the Tribunal transfers any proceedings to the Court of First Instance under section 115A(2), the Court must not transfer back those proceedings to the Tribunal.

(2) If the Tribunal transfers any proceedings to the Court of First Instance under section 115A(3)—

- (a) section 115(3) does not apply to those proceedings; and
- (b) the Court must not transfer back those proceedings to the Tribunal.

**115C. No further transfer of proceedings from Tribunal to Court of First Instance**

If the Court of First Instance transfers any proceedings to the Tribunal under section 115(1), the Tribunal must not transfer back those proceedings to the Court.”.

116 By deleting subclauses (2), (3) and (4) and substituting—

“(2) If the Tribunal makes an order transferring proceedings to the Court of First Instance under section 115A, it may make an order for costs prior to the transfer and of the transfer.”.

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

117 By deleting subclause (1) and substituting—

“(1) In any proceedings before the Court of First Instance or the Tribunal in which a contravention, or involvement in a contravention, of a conduct rule is alleged, the Court or the Tribunal may, either of its own motion or on application by a party to the proceedings, refer the alleged contravention or alleged involvement to the Commission for investigation under this Ordinance.”.

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

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

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

(2) Subject to subsection (2A), in such proceedings the Court of First Instance or the Tribunal (as the case requires) is bound by an earlier decision of the Court or Tribunal that the act in question is a contravention, or involvement in a contravention, of the conduct rule.

(2A) Subsection (2) does not apply in relation to a decision of the Court of First Instance or the Tribunal until the period specified in subsection (3) has expired.”.

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

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

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

“(1) This section applies to proceedings involving an alleged contravention, or alleged involvement in a contravention, of a conduct rule, before the specified Court or the Tribunal, that are brought by a person other than the Commission.

(2) The Commission may, with the leave of the specified Court or the Tribunal, and subject to any conditions imposed by the specified Court or the Tribunal, intervene in any such proceedings.”.

119 By adding—

“(5) In this section—  
“specified Court” (指明法院) means—

- (a) the Court of Final Appeal;
- (b) the Court of Appeal; or
- (c) the Court of First Instance.”.

120

By deleting the clause and substituting—

**“120. Commission may participate in proceedings**

(1) The Commission may, with the leave of or at the invitation of the specified Court or the Tribunal (as the case requires), participate in proceedings before the specified Court or the Tribunal involving an alleged contravention, or alleged involvement in a contravention, of a conduct rule that have been brought by another person and, in particular may—

- (a) make written submissions to the specified Court or the Tribunal; or
- (b) apply for, or join an application for, the adjournment of the proceedings pending the completion of the Commission’s investigation into the alleged contravention or involvement that is in issue in the proceedings.

(2) In this section—

“specified Court” (指明法院) means—

- (a) the Court of Final Appeal;
- (b) the Court of Appeal; or
- (c) the Court of First Instance.”.

121

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

- “(d) the Communications Authority;
- (e) any person who is or was a member of the Communications Authority;
- (f) any person who is or was a member of a committee of

- the Communications Authority, appointed under section 17 of the Communications Authority Ordinance (Cap. 616);
- (g) any person who is or was a public officer serving in the Office of the Communications Authority;
- (h) any person who is or was an employee or agent of the Office of the Communications Authority; or”.
- 123(1) By deleting “, the Telecommunications Authority and the Broadcasting Authority” and substituting “and the Communications Authority”.
- 125(1)(h) By deleting “regulator” and substituting “authority”.
- 125(2)(c)(i) By adding “company” before “secretary”.
- 139(2) By deleting “may” and substituting “is to”.
- 141(1) In paragraph (a), by adding “, or alleged involvements in contraventions,” after “contraventions”.
- 141(1) In paragraph (c), by adding “, or involvements in contraventions,” after “contraventions”.
- 141(1) By adding—  
“(ca) allegations of contraventions, or involvements in contraventions, of the conduct rules raised as a defence;”.
- 141(1) By deleting paragraph (f) and substituting—  
“(f) any matter related to a matter referred to in paragraph

(a), (b), (c), (ca), (d) or (e) if the matters arise out of the same or substantially the same facts.”.

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

149(1) By deleting everything before paragraph (a) and substituting—  
“(1) A finding of any fact by the Court of First Instance in any proceedings transferred to it by the Tribunal under section 115A(3), which is relevant to an issue arising in any other proceedings, either in the Court or in the Tribunal, relating to a contravention, or involvement in a contravention, of a conduct rule, is evidence of that fact in those other proceedings if—”.

153 By deleting subclauses (1), (2) and (3) and substituting—  
“(1) Subject to subsection (2) and section 153A, an appeal lies as of right to the Court of Appeal against any decision (including a decision as to the amount of any compensatory sanction or pecuniary penalty), determination or order of the Tribunal made under this Ordinance.

(2) An appeal does not lie—

(a) against an order of the Tribunal allowing an extension of time for appealing against a decision, determination or order of the Tribunal;

(b) against a decision, determination or order of the Tribunal if it is provided by any Ordinance or by the rules of the Tribunal made under section 156 that the decision, determination or order is final; or

(c) without the leave of the Court of Appeal



or the Tribunal, against an order of the Tribunal made with the consent of the parties or relating only to costs that are left to the discretion of the Tribunal.

(3) Rules of the Tribunal made under section 156 may provide for decisions, determinations or orders of any prescribed description to be treated for any prescribed purpose connected with appeals to the Court of Appeal as final or interlocutory.

(3A) An appeal does not lie against a decision of the Court of Appeal as to whether a decision, determination or order of the Tribunal is, for any purpose connected with an appeal to the Court, final or interlocutory.”.

New

In Part 10, in Division 3, by adding—

**“153A. Leave to appeal required for interlocutory appeals**

(1) Except as provided by the rules of the Tribunal made under section 156, an appeal does not lie to the Court of Appeal against any interlocutory decision, determination or order of the Tribunal unless leave to appeal has been granted by the Court of Appeal or the Tribunal.

(2) Rules of the Tribunal made under section 156 may specify an interlocutory decision, determination or order of any prescribed description as being an interlocutory decision, determination or order to which subsection (1) does not apply and accordingly an appeal lies as of right against the decision, determination or order.

(3) Leave to appeal for the purpose of subsection (1) may be granted—

(a) in respect of a particular issue arising out of the interlocutory decision, determination or order; and

(b) subject to any conditions that the Court of Appeal or the Tribunal considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(4) Leave to appeal may only be granted under subsection (1) if the Court of Appeal or the Tribunal is satisfied that—

(a) the appeal has a reasonable prospect of success; or

(b) there is some other reason in the interests of justice why the appeal should be heard.”.

155(3) By deleting “in any criminal or civil proceedings”.

157 By deleting the clause.

158 In the heading, by deleting “**Telecommunications**” and substituting “**Communications**”.

158(1) By deleting “Telecommunications Authority” and substituting “Communications Authority”.

158(1) By deleting paragraphs (a) and (b) and substituting—

“(a) licensees under the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562);

(b) persons who, although not such licensees, are persons

whose activities require them to be licensed under the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562); or”.

158(2) By deleting “Telecommunications” and substituting “Communications”.

159 By deleting the clause.

160 By deleting the clause and substituting—

**“160. Transfer of competition matter  
between competition  
authorities**

(1) Where one competition authority is performing a function in relation to a competition matter and another competition authority also has jurisdiction to perform functions in relation to that matter, the 2 competition authorities may agree that the matter be transferred to and be dealt with by one of them.

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

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

- 161(2) By deleting “may” and substituting “must”.
- 161(3) By deleting “, the Telecommunications Authority and the Broadcasting Authority” and substituting “and the Communications Authority”.
- 161 By adding—
- “(3A) Before signing any Memorandum of Understanding, or any amendment to it, under this section, the Commission and the Communications Authority must consult the Legislative Council.”.
- 161 By deleting the subclause (4) and substituting—
- “(4) The Commission and the Communications Authority must, within 6 weeks after the Memorandum of Understanding, or any amendment to it, is signed by them, publish it in any manner they consider appropriate.
- (5) The Commission and the Communications Authority must make available copies of any Memorandum of Understanding prepared and signed under this section and of all amendments made to it—
- (a) at their offices during ordinary business hours;
- (b) through the Internet or a similar electronic network; and
- (c) in any other manner they consider appropriate.
- (6) A Memorandum of Understanding prepared and signed under this section and all amendments made to it are not subsidiary legislation.”.

New

By adding—

**“162A. Determination of turnover  
of undertaking**

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

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

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

- (a) specify a period as the turnover period of an undertaking for the purpose of section 5(4) or 6(3) of Schedule 1;
- (b) provide for different ways for the determination of the turnover of an undertaking obtained in Hong Kong or outside Hong Kong; and
- (c) provide for different ways for the determination of the turnover of an undertaking in respect of different periods, including—
  - (i) a calendar year;
  - (ii) a financial year; and
  - (iii) a period specified as the turnover period of the undertaking under paragraph (a).”.

- 166(1)(d) By deleting subparagraph (ii) and substituting—
- “(ii) by sending it by post in a letter addressed to the undertaking at any place in Hong Kong at which the undertaking carries on business or, if the undertaking’s address is unknown, addressed to the undertaking’s last known place of business;”.
- 167(1)(b)(ii) By adding “this Part or” after “under”.
- 167(1)(b)(iii) By deleting “required” and substituting “ordered”.
- 167(3) In the definition of “officer”, in paragraph (a), by adding “company” before “secretary”.
- 172(3) In the Chinese text, by deleting “或” and substituting “及”.
- 174(1) By adding “company” before “secretary” (wherever appearing).
- 176(1) By deleting “Authority” and substituting “(Miscellaneous Provisions)”.
- 176(2) By deleting “Authority” and substituting “(Miscellaneous Provisions)”.
- 176(2) In the Chinese text, by deleting “或保留” and substituting “及保留”.
- 176(3)(b) By deleting “Authority” and substituting “(Miscellaneous Provisions)”.

- 176(5)(b) By deleting “that date” and substituting “the date on which the regulations are published in the Gazette”.
- Schedule 1 By deleting “& 36J” and substituting “, 36 & 162AJ”.
- Schedule 1, section 1 By deleting paragraph (a) and substituting—  
“(a) contributes to—  
(i) improving production or distribution; or  
(ii) promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit;”.
- Schedule 1 By adding—  
“4. **Mergers**  
(1) To the extent to which an agreement (either on its own or when taken together with another agreement) results in, or if carried out would result in, a merger, the first conduct rule does not apply to the agreement.  
(2) To the extent to which conduct (either on its own or when taken together with other conduct) results in, or if engaged in would result in, a merger, the second conduct rule does not apply to the conduct.  
  
5. **Agreements of lesser significance**  
(1) The first conduct rule does not apply to—  
(a) an agreement between undertakings in any calendar year if the combined turnover of the undertakings for the turnover period does not exceed \$200,000,000;

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

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

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

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

(4) The turnover period of an undertaking is the period specified as such for the purpose of this subsection in the regulations made under section 162A(2) if—

- (a) for an undertaking that has a financial year—
  - (i) the undertaking does not have a financial year that ends in the preceding calendar year; or
  - (ii) the financial year of the undertaking that ends in the



preceding calendar year is less than 12 months; or

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

(5) In this section—

“preceding calendar year” (對上公曆年) means the calendar year preceding the calendar year mentioned in subsection (1)(a), (b) or (c);

“turnover” (營業額)—

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

## 6. Conduct of lesser significance

(1) The second conduct rule does not apply to conduct engaged in by an undertaking the turnover of which

does not exceed \$40,000,000 for the turnover period.

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

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

(3) The turnover period of an undertaking is the period specified as such for the purpose of this subsection in the regulations made under section 162A(2) if—

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

(4) In this section—

“preceding calendar year” (對上公曆年) means the calendar year preceding the calendar year in which the conduct mentioned in subsection (1) is engaged in;

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

Schedule 2,  
section 1(a)

By deleting “or”.

Schedule 2,  
section 1(b)

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

Schedule 2,  
section 1

By adding—

“(c) accept a new commitment in substitution for such a commitment under section 61.”.

Schedule 2,  
section 4

By deleting everything after “or variation” and substituting—

“—

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

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

Schedule 2,  
section 5

By deleting paragraph (b) and substituting—

“(b) publishing the notice—

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

(ii) in any other manner the Commission considers appropriate,

for the purpose of bringing the matter to which the

notice relates to the attention of those the Commission considers likely to be affected by it.”.

Schedule 2,  
section 9

By deleting everything after “withdrawal” and substituting—  
“\_\_

- (a) through the Internet or a similar electronic network; and
- (b) in any other manner the Commission considers appropriate.”.

Schedule 2,  
section 10

By deleting paragraph (b) and substituting—

- “(b) publishing the notice—
- (i) through the Internet or a similar electronic network; and
  - (ii) in any other manner the Commission considers appropriate,
- for the purpose of bringing the matter to which the notice relates to the attention of those the Commission considers likely to be affected by it.”.

Schedule 2,  
section  
12(2)(b)

By deleting “and”.

Schedule 2,  
section 12(2)

By adding—

- “(ba) any other facts that the Commission considers to be relevant to the proposed release; and”.

Schedule 2,  
section 14

By deleting paragraph (a) and substituting—

- “(a) publish the release—
- (i) through the Internet or a similar electronic

network; and

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

Schedule 2,  
section 14(*b*)

In the English text, by deleting “the person who made the commitment” and substituting “that person”.

Schedule 2,  
section 15

In the English text, by deleting “is” and substituting “must be”.

Schedule 2,  
section 15

By deleting paragraph (*b*) and substituting—

- “(b) publishing the notice—
  - (i) through the Internet or a similar electronic network; and
  - (ii) in any other manner the Commission considers appropriate,

for the purpose of bringing the matter to which the notice relates to the attention of those the Commission considers likely to be affected by it.”.

Schedule 3

By deleting “, 110 & 113]” and substituting “& 110]”.

Schedule 3,  
section 2(*b*)

In the Chinese text, by deleting “須” and substituting “可”.

Schedule 5,  
section 2(1)

By adding “and not more than 16” after “5”.

Schedule 5,  
section 5(1)(*d*)

In the Chinese text, by deleting “或管理” and substituting “及管理”.

Schedule 5,  
section 5(3)

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



subsection (2)—

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

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

- (a) determine the class or description of the interest required to be disclosed;
- (b) determine the details of the interest required to be disclosed and the manner in which such interest is to be disclosed; and
- (c) from time to time change any matter determined under paragraph (a) or (b).

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

(4) If a person makes a disclosure as required by subsection (1), the Commission must cause the person's name

and the particulars of the disclosure to be recorded in the register, and if a further disclosure is made, the Commission must cause the particulars of the further disclosure to be recorded in the register.

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

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

#### **28B. Disclosure of interests**

(1) If a member of the Commission has—

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

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

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

- (a) the disclosure must be recorded in the minutes;
- (b) if the disclosure is made by the member presiding, the member must vacate the chair during the discussion;
- (c) the member (including one who has



vacated the chair under paragraph (b)) must, if so required by the majority of the other members present, withdraw from the meeting during the discussion and must not in any case, except as otherwise determined by the majority of the other members present, vote on any resolution concerning the matter under the discussion or be counted for the purpose of establishing the existence of a quorum.

(3) When a matter is being dealt with by way of the circulation of written resolutions under section 17 of this Schedule, and a member of the Commission has—

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

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

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

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

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

(7) Subsections (1), (2) and (6) apply to a member of a committee established by the Commission, as if any reference to the Commission in subsections (1) and (6) were a reference to the committee.”.

Schedule 5,  
section 29(2)

By adding—

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

Schedule 5,  
section 29(2)

By adding—

- “(ca) the duty to give a copy of its annual report, its statement of accounts, and the auditor’s report on the statement of accounts, to the Chief Executive under section 26 of this Schedule;”.

Schedule 5,  
section 29(2)

By adding—

- “(la) the power to appeal to the courts;”.

Schedule 6

In the heading, by deleting “MAY” and substituting “MUST”.

Schedule 6,  
section 4

In the Chinese text, by deleting “某些特定事宜或某類” and substituting “特定事宜或特定類別”.

Schedule 6,  
section 6

By deleting “other parties” and substituting “the other party”.

Schedule 7,  
section 3(4)

In the Chinese text, by deleting “自動” and substituting “自主”.

- Schedule 7,  
section 6                    In the heading, by deleting “to” and substituting “that may”.
- Schedule 7,  
section 10(3)                In the Chinese text, by deleting “屆會期” and substituting “會期”.
- Schedule 7,  
section 10(5)                In the Chinese text, by deleting “屆會期” and substituting “會期”.
- Schedule 7,  
section  
11(1)(a)                    In the English text, by deleting “carries” and substituting “has carried”.
- Schedule 7,  
section 12                    By deleting subsection (1) and substituting—  
                                  “(1)     Before making a decision on an application  
                                  made under section 11 of this Schedule, the Commission  
                                  must—  
                                  (a)     in order to bring the application to the  
                                  attention of those the Commission  
                                  considers likely to be affected by the  
                                  decision, publish notice of the  
                                  application—  
                                  (i)     through the Internet or a similar  
                                  electronic network; and  
                                  (ii)    in any other manner the  
                                  Commission                considers  
                                  appropriate; and  
                                  (b)    consider any representations about the  
                                  application that are made to the  
                                  Commission.”.
- Schedule 7,  
section 14                    In the Chinese text, by deleting “採取任何行動” and substituting

“提出任何訴訟”。

Schedule 7,  
section 15(2)

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

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

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

Schedule 7,  
section 15

By adding—

“(2A) The notice referred to in subsection (2) must be  
published—

- (a) through the Internet or a similar electronic network; and
- (b) in any other manner the Commission considers appropriate.”.

Schedule 7,  
section 15(6)

In the Chinese text, by deleting “作何” and substituting “任何”.

Schedule 7,  
section 16

By deleting subsection (3) and substituting—

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

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

- Schedule 7,  
section 17(4)      By adding “the Legislative Council and” after “consult”.
- Schedule 7,  
section 17      By deleting subsection (5) and substituting—
- “(5)      The Commission must make available copies of all guidelines issued under this section and of all amendments made to them—
- (a)      at the offices of the Commission during ordinary business hours;
- (b)      through the Internet or a similar electronic network; and
- (c)      in any other manner the Commission considers appropriate.
- (6)      A person does not incur any civil or criminal liability only because the person has contravened any guidelines issued under this section or any amendments made to them.
- (7)      If, in any legal proceedings, the Tribunal or any other court is satisfied that a guideline is relevant to determining a matter that is in issue—
- (a)      the guideline is admissible in evidence in the proceedings; and
- (b)      proof that a person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.
- (8)      Guidelines issued under this section and all amendments made to them are not subsidiary legislation.”.
- Schedule 8      In the Chinese text, in the heading, by deleting “相關” and



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

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

Schedule 8 By adding—

#### “PART 10

#### AMENDMENTS TO COMMUNICATIONS AUTHORITY ORDINANCE

#### 39. **Functions of Authority**

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

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

Schedule 9,  
section 1 In the Chinese text, in the definition of “原有《廣播條例》”, by deleting “章)。” and substituting “章) ;”.

Schedule 9,  
section 1 By deleting the definition of “pre-amended Broadcasting Authority Ordinance”.

Schedule 9,  
section 1 By adding—  
““pre-amended Broadcasting (Miscellaneous Provisions) Ordinance” (原有《廣播(雜項條文)條例》) means the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) in force immediately before the commencement date;”.

- Schedule 9,  
section 2
- By deleting “Authority” and substituting “(Miscellaneous Provisions)”.
- Schedule 9,  
section 3(2)(a)
- In the Chinese text, by deleting “發生” (wherever appearing) and substituting “作出”.
- Schedule 9,  
section 3(8)
- By deleting “Telecommunications Authority” (wherever appearing) and substituting “Communications Authority”.
- Schedule 9,  
section 3
- By deleting subsection (9).
- Schedule 9,  
section 4
- In the heading, by deleting “**Authority**” and substituting “**(Miscellaneous Provisions)**”.
- Schedule 9,  
section 4(1)
- In the definition of “pre-amended Ordinance”, in paragraph (a), by deleting “Authority” and substituting “(Miscellaneous Provisions)”.
- Schedule 9,  
section 4(2)(a)
- In the Chinese text, by deleting “發生” (wherever appearing) and substituting “作出”.
- Schedule 9,  
section 4(2)
- In the Chinese text, by deleting “訂立” and substituting “制定”.
- Schedule 9,  
section 4(3)
- In the Chinese text, by adding “繼續” before “適用”.
- Schedule 9,  
section 4(3)
- In the Chinese text, by deleting “訂立” and substituting “制定”.



## Competition Bill

## Committee Stage

Amendments moved by the Honourable Ronny TONG Ka-wah, SC

<u>Clause</u>	<u>Amendment Proposed</u>
<u>2</u> [NEGATIVED]	By deleting the definition of “statutory body”.
<u>3</u> [NEGATIVED]	By deleting the clause.
<u>4</u> [NEGATIVED]	By deleting the clause.
<u>5</u> [NEGATIVED]	By deleting the clause.
<u>9(1)(b)</u> [NEGATIVED]	By deleting “section 15;” and substituting “section 15; or”.
<u>9(1)(c)</u> [NEGATIVED]	By deleting “; or” and substituting a full stop.
<u>9(1)</u> [NEGATIVED]	By deleting paragraph (d).
<u>24(1)(a)</u> [NEGATIVED]	By deleting “Schedule 1;” and substituting “Schedule 1; or”.
<u>24(1)(b)</u> [NEGATIVED]	By deleting “; or” and substituting a full stop.
<u>24(1)</u> [NEGATIVED]	By deleting paragraph (c).
<u>Schedule 1</u> [NEGATIVED]	By adding— <ul style="list-style-type: none"> <li>“4. <b>Mergers</b></li> <li>(1) To the extent to which an agreement (either on</li> </ul>

its own or when taken together with another agreement) results in, or if carried out would result in, a merger, the first conduct rule does not apply to the agreement.

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

**5. Agreements of lesser significance**

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

- (a) an agreement between undertakings in any calendar year if the combined turnover of the undertakings for the turnover period does not exceed \$100,000,000;
- (b) a concerted practice engaged in by undertakings in any calendar year if the combined turnover of the undertakings for the turnover period does not exceed \$100,000,000; or
- (c) a decision of an association of undertakings in any calendar year if the turnover of the association for the turnover period does not exceed \$100,000,000.

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

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

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

(4) The turnover period of an undertaking is the period specified as such for the purpose of this subsection in the regulations made under section 162A(2) if—

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

(5) In this section—

“preceding calendar year” (對上公曆年) means the calendar

year preceding the calendar year mentioned in subsection (1)(a), (b) or (c);

“turnover” (營業額)—

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

**6. Conduct of lesser significance**

(1) The second conduct rule does not apply to conduct engaged in by an undertaking the turnover of which does not exceed \$11,000,000 for the turnover period.

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

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

(3) The turnover period of an undertaking is the period specified as such for the purpose of this subsection in the regulations made under section 162A(2) if—

- (a) for an undertaking that has a financial year—

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

(4) In this section—

“preceding calendar year” (對上公曆年) means the calendar year preceding the calendar year in which the conduct mentioned in subsection (1) is engaged in;

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

Schedule 7,  
section 11(2)  
NEGATIVED

By deleting everything after “if completed” and substituting “be, excluded from the application of the merger rule by or as a result of section 8 (Exclusions) of this Schedule.”.

## Competition Bill

## Committee Stage

Amendments moved by the Honourable Mrs Regina IP LAU Suk-ye, GBS, JPClauseAmendment Proposed1(2)  
NEGATIVED

By deleting “This” and substituting “Subject to subsection (3), this”.

1  
NEGATIVED

By adding—

“(3) Sections 6 and 21 may only come into operation after the guidelines referred to in section 35 have been approved by the Legislative Council under section 35(4A)(a).”.

3(1)  
NEGATIVED

By adding “if the conditions in subsection (4) are fulfilled” after “statutory body”.

3  
NEGATIVED

By deleting subclause (2).

3  
NEGATIVED

By deleting subclause (3) and substituting—

“(3) In this section, a reference to a statutory body includes an employee or agent of the statutory body, acting in that capacity.”.

3  
NEGATIVED

By adding—

“(4) The conditions referred to in subsection (1) are—

(a) the statutory body is not engaging in an

economic activity in direct competition with another undertaking;

- (b) the economic activity of the statutory body is not affecting the economic efficiency of a specific market; and
- (c) the economic activity of the statutory body is directly related to the provision of an essential public service or the implementation of public policy.”.

5

NEGATIVED

By deleting subclause (1) and substituting—

“(1) The Chief Executive in Council may, on being satisfied that there are exceptional and compelling reasons of public policy, by regulation disapply the provisions referred to in section 3(1) to—

- (a) any person; or
- (b) any person, to the extent that the person is engaged in an activity specified in the regulation.”.

5

NEGATIVED

By deleting subclause (2).

5

NEGATIVED

By deleting subclause (3) and substituting—

“(3) In this section, a reference to a person includes an employee or agent of the person, acting in that capacity.”.

35(1)

NEGATIVED

By adding—

“(aa) indicating the manner in which it expects to interpret the expressions “market” (市場), “market power” (市場權勢) and “substantial degree of market power” (相

當程度的市場權勢) used in this Ordinance;”.

35  
NEGATIVED

By adding—

“(4A) Without limiting subsection (4)—

- (a) before any guidelines are first issued under this section, the guidelines must be submitted to the Legislative Council for approval; and
- (b) before any amendments to the guidelines are issued under this section, the amendments must be submitted to the Legislative Council for approval.

(4B) The Legislative Council may by resolution amend the whole or any part of the guidelines or amendments submitted under subsection (4A).”.

35  
NEGATIVED

By deleting subclause (5) and substituting—

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

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

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



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

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

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

## Competition Bill

## Committee Stage

Amendment moved by the Honourable Albert HO Chun-yanClauseAmendment Proposed

New

[NEGATIVED]

In Part 1, by adding—

**“5A. Expiry of sections 3 to 5**

Sections 3, 4 and 5 cease to have effect on the third anniversary of the day on which those sections come into operation.”.

## Competition Bill

## Committee Stage

Amendments moved by the Honourable LEUNG Kwok-hung

<u>Clause</u>	<u>Amendment Proposed</u>
129 [NEGATIVED]	By adding “, in accordance with the objective of enhancing economic efficiency and thus the benefit of consumers through promoting sustainable competition,” after “The Commission”.
Schedule 5, section 2 [NEGATIVED]	By adding —  “(1A) Of the members appointed under subsection (1) — (a) at least one must have expertise or experience in small and medium enterprises; and (b) at least one must have expertise or experience in consumer welfare.”.