

立法會
Legislative Council

LC Paper No. LS11/12-13

**Paper for the House Committee Meeting
on 30 November 2012**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 23 November 2012**

Date of tabling in LegCo : 28 November 2012

Amendment to be made by : 19 December 2012 (or 16 January 2013 if extended by resolution)

Competition Ordinance (14 of 2012)

Competition Ordinance (Commencement) Notice 2012 (L.N. 177)

The Competition Ordinance (14 of 2012) (the Ordinance) was passed by the Legislative Council (LegCo) on 14 June 2012 and published in the Gazette on 22 June 2012. The Ordinance seeks to prohibit undertakings from adopting conduct which has the object or effect of preventing, restricting or distorting competition in Hong Kong. It provides for general prohibitions in three major areas of anti-competitive conduct (described as the first conduct rule under section 6, the second conduct rule under section 21, and the merger rule under section 3 of Schedule 7, which are collectively known as the "competition rules" in the Ordinance) as well as the institutional arrangements and penalty provisions for their enforcement. Phased implementation of the Ordinance has all along been the intention of the Administration. L.N. 177 is the start.

2. By L.N. 177 made under section 1(2) of the Ordinance, the Secretary for Commerce and Economic Development has appointed-

- (a) 18 January 2013 as the day on which the following provisions of the Ordinance come into operation-
 - (i) sections 1, 2, 35, 38, 40 and 59 (relating to short title, commencement, interpretation, and guidelines);
 - (ii) Parts 8 and 9 (relating to disclosure of information and the Competition Commission);

- (iii) Divisions 1 and 2 of Part 12 (relating to miscellaneous general provisions and provisions on service of documents);
 - (iv) section 176 (relating to consequential and related amendments);
 - (v) Schedule 5 (relating to the Competition Commission);
 - (vi) Part 6 of Schedule 7 (relating to guidelines on the merger rule);
 - (vii) Parts 5 and 7 and section 32 of Schedule 8 (relating to consequential and related amendments);
- (b) 1 August 2013 as the day on which the following provisions of the Ordinance come into operation-
- (i) Part 10 (relating to the Competition Tribunal);
 - (ii) Part 3 of Schedule 8 (relating to amendments to Judicial Officers Recommendation Commission Ordinance (Cap. 92)).

3. Members may refer to the LegCo Brief (File Reference: CITB CR 05/62/43) issued by the Commerce, Industry and Tourism Branch, Commerce and Economic Development Bureau on 21 November 2012 for background information.

4. The provisions to be commenced by L.N. 177 mainly relate to the setting up of the Competition Commission (the Commission) and the Competition Tribunal (the Tribunal). Members may wish to note that the competition rules and the relevant penalty provisions will not be brought into operation by L.N. 177.

5. According to the Administration, during the transitional period, the Commission will prepare guidelines and carry out consultation as required under the Ordinance¹ as well as conduct publicity programmes to promote public understanding of the Ordinance. The Judiciary, namely the Chief Judge of the High Court and the President of the Tribunal, will also prepare subsidiary

¹ Under sections 35(4) and 59(3) of and section 17(4) of Schedule 7 to the Ordinance, before issuing any guidelines or amendments to them, the Commission must consult LegCo and any persons it considers appropriate.

legislation relating to the Tribunal proceedings including procedural rules², and make other necessary arrangements to pave way for the full operation of the Tribunal.

6. According to paragraph 5 of the LegCo Brief, the rest of the Ordinance will only be commenced when the preparation work is completed. The Administration expects that it would take at least a year.

7. The Clerk to the Panel on Economic Development has advised that L.N. 177 has not been previously discussed by the Panel. Nevertheless, Members may wish to note that during the scrutiny of the Bill, the Bills Committee on Competition Bill had noted the Administration's intent to implement the Bill in phases after its enactment to allow sufficient time for setting up the Commission and the Tribunal and preparing the guidelines before the competition rules come into force. According to the Administration, this would enable the public and the business sector to familiarize themselves with the new legal requirements during the transitional period and make necessary adjustments. The Bills Committee was informed that the transitional period would take at least a year.

8. No difficulties have been identified in the legal and drafting aspects of the above item of subsidiary legislation.

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LS/S/8/12-13

² Under section 158(1) of the Ordinance, the Chief Judge may, after consulting the President of the Tribunal, make rules regulating and prescribing the practice and procedure to be followed in the Tribunal in all matters with respect to which the Tribunal has jurisdiction, and any matters incidental to or relating to that practice or procedure.