

立法會
Legislative Council

LC Paper No. CB(1)471/12-13
(These minutes have been seen
by the Administration)

Ref : CB1/SS/2/12

Subcommittee on Competition Ordinance (Commencement) Notice 2012

Minutes of the first meeting
held on Tuesday, 11 December 2012, at 10:45 am
in Conference Room 2A of the Legislative Council Complex

Members present : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon LAM Tai-fai, SBS, JP
Hon WU Chi-wai, MH
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon Christopher CHEUNG Wah-fung, JP
Hon CHUNG Kwok-pan

Members absent : Hon Albert HO Chun-yan
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Mrs Regina IP LAU Suk-yea, GBS, JP
Hon YIU Si-wing
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP

Public officers attending : Agenda item II

Ms Carol YUEN, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry) 1

Mr Raymond WU
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry) 2

Ms Phyllis POON
Senior Government Counsel

Mr David GROVER
Senior Government Counsel

Clerk in attendance: Ms Annette LAM
Chief Council Secretary (1)3

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Sarah YUEN
Senior Council Secretary (1)3

Ms Rita YUNG
Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)3

Ms Yvonna HO
Clerical Assistant (1)3

Action

I. Election of Chairman

Mr Andrew LEUNG was elected Chairman of the Subcommittee.

II. Meeting with the Administration

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

File Ref: CITB CR 05/62/43 -- Legislative Council Brief
issued by the Commerce and
Economic Development
Bureau

LC Paper No. LS11/12-13	--	Legal Service Division Report
LC Paper CB(1)272/12-13(01)	No. --	Paper on Competition Ordinance (Commencement) Notice 2012 prepared by the Legislative Council Secretariat (background brief)
LC Paper No. CB(1)1919/11-12	--	Report of the Bills Committee on Competition Bill for the Council meeting on 30 May 2012)

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

3. The Administration briefed members on the Competition Ordinance (Commencement) Notice 2012 (the Notice), which sought to bring those provisions of the Competition Ordinance (the Ordinance) in relation to the short title, commencement of the Ordinance, interpretation, guidelines to be issued by the Competition Commission (the Commission), and other provisions related to the establishment and operation of the Commission into operation on 18 January 2013, and those provisions in relation to the Competition Tribunal (the Tribunal) into operation on 1 August 2013. Members noted that it had been the Administration's intent to implement the Ordinance in phases after its enactment to allow sufficient time for setting up the Commission and the Tribunal and preparing guidelines regarding the competition rules, the lodging of complaints and investigations, etc., before the competition rules came into force. The arrangement would enable the public and the business sector to familiarize themselves with the new legal requirements and make necessary adjustments. The competition rules in the Ordinance would only come into force upon completion of all relevant preparatory work, which was expected to take at least one year.

Deliberations and Legislative timetable

4. The Subcommittee had completed scrutiny of the Notice and would not move any amendment to the Notice. Members agreed that the Chairman should move a motion at the Council meeting on 19 December 2012 to extend the scrutiny period of the Notice to 16 January 2013, so as to enable the Subcommittee to provide a report to the House Committee (HC) and to allow sufficient time for other members to give notice of motion to amend the Notice (if any).

5. Members noted that after extending the scrutiny period of the Notice, the deadline for giving notice of amendment to the Notice was 9 January 2013. Members agreed that the Chairman would report the Subcommittee's deliberations to HC on 4 January 2013 and during the motion debate to take note of the relevant report of the HC on consideration of subsidiary legislation and other instruments at the Legislative Council meeting of 16 January 2013.

III. Any other business

6. There being no other business, the meeting ended at 11:10 am.

Council Business Division 1
Legislative Council Secretariat
24 January 2013

**Proceedings of the first meeting of
the Subcommittee on Competition Ordinance (Commencement) Notice 2012
on Tuesday, 11 December 2012, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Election of Chairman			
000000 – 000213	Mr Andrew LEUNG Mr WONG Ting-kwong Mr MA Fung-kwok	Election of Chairman	
Agenda Item II – Meeting with the Administration			
000214 – 000348	Chairman	Opening remarks The Subcommittee agreed that the Chairman should move a motion at the Council meeting on 19 December 2012 to extend the scrutiny period of the Notice to 16 January 2013, so as to enable the Subcommittee to provide a report to the House Committee, and to allow sufficient time for giving notice of motion to amend the Notice (if any).	
000349 – 000626	Chairman Administration	<u>General introduction of the Competition Ordinance (Commencement) Notice 2012 by the Administration</u>	
000627 – 000858	Chairman Mr Ronny TONG Administration	In response to Mr Ronny TONG on the progress in preparing for the establishment of the Competition Commission (the Commission), the Administration advised that – (a) Establishment of the Commission could not be proceeded with before the commencement of the relevant provisions in the Notice; (b) Recruitment of the Chief Executive Officer (CEO) of the Commission and the executive team would be conducted by the Commission with regard to the relevant job requirements; and (c) The Commission could decide whether to conduct a global recruitment exercise to fill the post of the CEO.	

Time marker	Speaker	Subject(s)	Action required
<i>Clause-by-clause examination of the Competition Ordinance (Commencement) Notice 2012</i>			
000859 – 001443	Chairman Administration Mr Ronny TONG	<p>Briefing by the Administration on paragraphs (a)(i), (a)(ii) and (a)(v) of the Notice. Members noted that under section 1(2) of the Competition Ordinance (the Ordinance), the Secretary for Commerce and Economic Development (SCED) had appointed 18 January 2013 as the day on which the following provisions of the Ordinance would come into operation –</p> <p>(a) Sections 1, 2, 35, 38, 40 and 59 (relating to short title, commencement, interpretation, and guidelines), in recognition that the Commission had to prepare guidelines and conduct consultation as required under the Ordinance;</p> <p>(b) Parts 8 and 9 (relating to disclosure of information and the Commission); and</p> <p>(c) Schedule 5 (relating to the Commission).</p> <p>In response to Mr Ronny TONG's enquiry about the commencement of the complaint and investigation mechanism in respect of anti-competitive conduct, the Administration advised that –</p> <p>(a) Sections 35, 38, 40 and 59 of the Ordinance would need to be brought into operation to enable the Commission to prepare guidelines regarding the conduct rules, complaints and investigations. For example, guidelines to indicate the manner and form in which complaints were to be made, the procedures which the Commission would follow in conducting investigations. Under sections 35(4) and 59(3) of and section 17(4) of Schedule 7 to the Ordinance, the Commission must consult LegCo and any persons it considered appropriate before issuing any guidelines or amendments to them; and</p> <p>(b) Only after the preparatory work on relevant guidelines and procedures was completed would the Ordinance come into full operation to enable the Commission to consider and investigate competition-related complaints.</p>	

Time marker	Speaker	Subject(s)	Action required
001444 – 001844	Chairman Administration Mr Ronny TONG	<p>Briefing by the Administration on paragraph (a)(iii) of the Notice. Members noted that under section 1(2) of the Ordinance, SCED had appointed 18 January 2013 as the day on which Divisions 1 and 2 of Part 12 (relating to miscellaneous general provisions and provisions on service of documents) would come into operation, inter alia, to enable SCED to make regulations to provide for the determination of the turnover of an undertaking, and to enable the Chief Executive to make regulations to prescribe the amount of fees which the Commission might charge for its services.</p> <p>The Chairman and Mr Ronny TONG's view that the Commission and the relevant stakeholders should be consulted when determining the calculation of turnover of an undertaking as an undertaking's turnover would be adopted as the threshold for exclusion from the first and second conduct rules for agreements and conduct of lesser significance, and would also form the basis for determining the pecuniary penalty for contravention of a competition rule.</p> <p>The Administration noted the concern and advised that –</p> <ul style="list-style-type: none"> (a) Making of the above regulations before full operation of the Ordinance was necessary to ensure certainty; (b) If the relevant sections in the Notice were not commenced, SCED would not have the power to make the above regulations; and (c) The Commission, as the enforcement agency, would be consulted in view of the technical nature of the regulations. 	
001845 – 002052	Chairman Administration	<p>Briefing by the Administration on paragraphs (a)(iv), (a)(vi) and (a)(vii) of the Notice. Members noted that under section 1(2) of the Ordinance, SCED had appointed 18 January 2013 as the day on which the following provisions of the Ordinance would come into operation –</p> <ul style="list-style-type: none"> (a) Section 176 (relating to consequential and related amendments); 	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) Part 6 of Schedule 7 (relating to guidelines on the merger rule); and</p> <p>(c) Parts 5 and 7 and section 32 of Schedule 8 (relating to consequential and related amendments) to subject the Commission to regulation of the Prevention of Bribery Ordinance (Cap. 201), The Ombudsman Ordinance (Cap. 397), and relevant confidentiality provisions relating to the Broadcasting Ordinance (Cap. 562).</p> <p>In response to the Chairman, the Administration explained that although the merger rule would be confined to carrier licences under the Telecommunications Ordinance (Cap. 106), the commencement of the relevant provisions was necessary to enable the preparation of guidelines for the regulation of mergers which had, or were likely to have, the effect of substantially lessening competition in Hong Kong.</p>	
002053 – 002145	Chairman Administration	<p>Briefing by the Administration on paragraphs (b)(i) and (b)(ii) of the Notice. Members noted that under section 1(2) of the Ordinance, SCED had appointed 1 August 2013 as the day on which the following provisions of the Ordinance would come into operation –</p> <p>(a) Part 10 (relating to the establishment and operation of the Tribunal); and</p> <p>(b) Part 3 of Schedule 8 (relating to amendments to Judicial Officers Recommendation Commission Ordinance (Cap. 92)).</p>	
002146 – 002327	Chairman	Legislative timetable	