

立法會
Legislative Council

LC Paper No. CB(1)1921/13-14
(These minutes have been seen
by the Administration and the Judiciary
Administration)

Ref : CB1/BC/8/13/1

Bills Committee on Competition (Amendment) Bill 2014

Minutes of first meeting
held on Thursday, 12 June 2014, at 9:00 am
in Conference Room 3 of the Legislative Council Complex

- Members present** : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)
Hon LEE Cheuk-yan
Hon Abraham SHEK Lai-him, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon Albert CHAN Wai-yip
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon Charles Peter MOK
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon TANG Ka-piu
- Members absent** : Hon Albert HO Chun-yan
Hon Cyd HO Sau-lan
Hon CHUNG Kwok-pan

Public Officers attending : For item II

Mr Godfrey LEUNG, JP
Under Secretary for Commerce and Economic Development

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 Wendy CHEUNG
Assistant Judiciary Administrator (Development)

Ms Monica LAW
Senior Assistant Law Draftsman
Department of Justice

Mr Francis KWAN
Senior Assistant Law Officer (Civil Law) (Acting)
Department of Justice

Mr David GROVER
Senior Government Counsel
Department of Justice

Miss Yvonne CHEUNG
Government Counsel
Department of Justice

Clerk in Attendance : Ms Miranda HON
Chief Council Secretary (1)1

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Miss Lilian MOK
Senior Council Secretary (1)1

Ms Mandy LI
Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)1

Action

I. Election of Chairman (and Deputy Chairman)

Election of Chairman

1. Mr Abraham SHEK, the Member who had the highest precedence among members of the Bills Committee present at the meeting, presided at the election of Chairman of the Bills Committee.
2. Mr Abraham SHEK invited nominations for the chairmanship of the Bills Committee. Mr Christopher CHEUNG nominated Mr Andrew LEUNG, and the nomination was seconded by Dr Elizabeth QUAT. Mr LEUNG accepted the nomination.
3. There being no other nominations, Mr Andrew LEUNG was declared Chairman of the Bills Committee. Mr LEUNG then took the chair.
4. The Chairman sought members' view on the need for a deputy chairman. It was agreed that no deputy chairman was required.

II. Meeting with the Administration and the Judiciary Administration

- (LC Paper No. CB(1)1591/13-14(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)
- LC Paper No. CB(1)1591/13-14(02) — Assistant Legal Adviser's letter dated 30 May 2014 to the Administration
- LC Paper No. CB(1)1591/13-14(03) — Background brief prepared by the Legislative Council Secretariat

Action

LC Paper No. CB(1)1602/13-14(01) — Administration's reply to Assistant Legal Adviser's letter dated 30 May 2014

Relevant papers

LC Paper No. CB(3) 627/13-14 — The Bill

File Ref: CITB (CR) 05/62/43/8 — Legislative Council Brief

LC Paper No. LS54/13-14 — Legal Service Division Report)

5. The Bills Committee deliberated (index of proceedings attached at the **Annex**).

Admin/
Judiciary
Admin

6. The Administration/Judiciary Administration was requested to -

- (a) provide the views submitted by the Hong Kong Bar Association and the Law Society of Hong Kong on the Competition (Amendment) Bill 2014 ("the Bill");
- (b) consider the need to grant solicitors rights of audience before the Competition Tribunal ("the Tribunal");
- (c) consider expressly stating in the Bill that the proposed new sections conferring specific powers on the Tribunal were "without limiting" or "without affecting" the general powers of the Tribunal which already existed under the Competition Ordinance (Cap. 619) ("the CO") for the avoidance of doubt;
- (d) clarify whether it was the policy intent that the Tribunal had the jurisdiction to make an order prohibiting a person from leaving Hong Kong ("prohibition order") if the person was associated with an undertaking (e.g. as a director) which had been determined to have contravened the CO and his/her absence from Hong Kong might be likely to obstruct or delay any judgment or order that might be given against the undertaking and if so, clarify whether the drafting of the proposed new section 151A(3)(d) could achieve this policy intent;

Action

- (e) provide information and relevant cases to illustrate the operation of the existing section 21B of the High Court Ordinance (Cap. 4) which was similar to the proposed new section 151A concerning an prohibition order; and
- (f) clarify the meaning of "property" in the proposed new section 151A(1)(b)(ii), and in particular whether it included "intellectual property".

7. Members agreed to continue discussion at the next meeting to be held on Monday, 30 June 2014, at 2:30 pm and to invite deputations to give their views on the Bill at the same meeting.

III. Any other business

8. There being no other business, the meeting ended at 10:55 am.

Council Business Division 1
Legislative Council Secretariat
12 August 2014

Bills Committee on Competition (Amendment) Bill 2014

**Proceedings of the first meeting
on Thursday, 12 June 2014, at 9:00 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Election of Chairman (and Deputy Chairman)</i>			
000133 - 000227	Mr Abraham SHEK Mr Christopher CHEUNG Dr Elizabeth QUAT Mr Andrew LEUNG	Election of Chairman Mr Andrew LEUNG was elected Chairman of the Bills Committee.	
<i>Agenda Item II - Meeting with the Administration and the Judiciary Administration</i>			
000228 - 000354	Chairman	Opening remarks The Chairman declared that he was a member of the Competition Commission ("the Commission").	
000355 - 001102	Administration	Briefing by the Administration on the Competition (Amendment) Bill 2014 ("the Bill").	
001103 - 001735	Chairman Mr Albert CHAN Administration Judiciary Administration	Mr Albert CHAN expressed the following concerns/enquiries – (a) the costs of legal proceedings before the Competition Tribunal ("the Tribunal") might impose a huge financial burden on small and medium enterprises ("SMEs") involved in competition cases; (b) sought elaboration on the operation of the Tribunal, in particular whether legal representation was required in the proceedings before the Tribunal; and (c) whether litigation could be instigated by individual persons to the Tribunal. The Administration/Judiciary Administration responded that – (a) the Competition Ordinance (Cap. 619) ("the CO") sought to prohibit and deter "undertakings" from adopting anti-competitive conduct which had the object or	

Time marker	Speaker	Subject(s)	Action required
		<p>effect of preventing, restricting or distorting competition in Hong Kong. It provided for general prohibitions in three major areas of anti-competitive conduct as described in the first conduct rule, the second conduct rule and the merger rule;</p> <p>(b) the Tribunal was established within the Judiciary as a superior court of record, on a par with the Court of First Instance ("the CFI") of the High Court, to hear and adjudicate on competition cases brought by the Commission, follow-on private actions, as well as applications for the review of certain determinations of the Commission, etc.;</p> <p>(c) the Tribunal would conduct its proceedings with as much informality as was consistent with attaining justice. This would help save the efforts and legal costs of the parties concerned (including SMEs as appropriate) and achieve expediency in the resolution of disputes. Similar to the CFI, legal representation was not a requirement in the conduct of legal proceedings before the Tribunal;</p> <p>(d) the Judiciary was formulating the rules for the operation and proceedings of the Tribunal and making other necessary administrative arrangements to prepare for the full operation of the Tribunal;</p> <p>(e) the Commission was established to investigate into competition-related complaints. It was preparing regulatory guidelines and would consult the Legislative Council ("LegCo") and other relevant parties before issuing the guidelines; and</p> <p>(f) under the current legal framework, only the Commission could bring proceedings before the Tribunal for any alleged contravention of a competition rule. However, follow-on actions could be brought by persons who had suffered loss or damage as a result of a contravention of a conduct rule to claim damages.</p>	

Time marker	Speaker	Subject(s)	Action required
001736 - 002650	Chairman Mr Jeffrey LAM Administration Judiciary Administration	<p>Mr Jeffrey LAM expressed concerns –</p> <ul style="list-style-type: none"> (a) about the heavy workload of High Court registrars who, by virtue of their appointments as High Court registrars, would hold the corresponding offices or positions in the Tribunal and take up the duties as the Tribunal's registrars; (b) about the insufficient judicial manpower within the Tribunal which might possibly lead to a long waiting and hearing time for competition cases brought before the Tribunal; and (c) that some SMEs might be caught inadvertently as the general prohibition against anti-competitive activities was difficult for them to understand and comply with. <p>The Administration/Judiciary Administration responded that –</p> <ul style="list-style-type: none"> (a) the implementation of the CO might result in considerable additional workload for the Judiciary. Hence, following the approval of LegCo in early 2013, two additional judicial posts (namely, one CFI Judge and one Deputy Registrar), among others, had been created to support the establishment and operation of the Tribunal; (b) as the Tribunal might generally follow the practices and procedures of the CFI and there was a mechanism allowing transfer of proceedings between the CFI and the Tribunal subject to the decision of the courts, it was considered desirable that CFI judges would, by virtue of their appointments as CFI judges, be members of the Tribunal and High Court registrars would, by virtue of their appointments as High Court registrars, hold the corresponding offices or positions in the Tribunal; (c) the President and Deputy President of the Tribunal would play an important role in the daily operation of the Tribunal and discharge judicial duties including hearing cases within the jurisdiction of the Tribunal. 	

Time marker	Speaker	Subject(s)	Action required
		<p>Depending on the actual caseload, other CFI judges might also be deployed to hear competition cases brought before the Tribunal;</p> <p>(d) the Commission was drafting regulatory guidelines to elaborate the key elements of the general prohibitions of the CO and would reach out to the general public and the business sector to enhance their understanding of how the CO would be interpreted and applied;</p> <p>(e) the President and Deputy President of the Tribunal would prioritize the handling of competition cases depending on factors such as the urgency of individual cases. The newly created Deputy Registrar post provided dedicated support for the Tribunal's work; and</p> <p>(f) the Judiciary was formulating Tribunal Rules and the directions of the President of the Tribunal to prepare for the full operation of the Tribunal.</p>	
<p>002651 - 003839</p>	<p>Chairman Mr Ronny TONG Judiciary Administration</p>	<p>Mr Ronny TONG –</p> <p>(a) enquired about the appointment of the President and Deputy President of the Tribunal as well as the deployment of CFI judges to hear and adjudicate competition cases; and</p> <p>(b) sought elaboration on the Administration's proposal to amend section 156 of the CO to provide expressly that, temporary registrars, temporary senior deputy registrars, and temporary deputy registrars of the High Court would automatically hold the corresponding positions in the Tribunal and be given similar powers and duties of their permanent counterparts in the Tribunal.</p> <p>The Judiciary Administration responded that –</p> <p>(a) Hon Mr Justice Godfrey LAM and Hon Madam Justice Queeny AU YEUNG had been appointed as the President and Deputy President of the Tribunal respectively in July 2013. They would be the main judges handling cases brought</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>before the Tribunal. As all CFI judges would be members of the Tribunal by virtue of their appointment as CFI judges, the Chief Judge of the High Court would deploy other CFI judges to hear and adjudicate competition cases if necessary; and</p> <p>(b) in the Judiciary, the "Registrar" grade consisted of four tiers of judicial officers, namely, Registrar, Senior Deputy Registrar, Deputy Registrar and Assistant Registrar (the latter three were collectively referred to as "Masters"). The appointment of temporary registrars/senior deputy registrars/deputy registrars involved, among others, an acting arrangement under which registrars of lower ranks would act up and be considered for substantive promotion subject to their performance. They were generally long-term employees of the Judiciary. The Judiciary Administration would keep the workload and staffing situation of the Tribunal under review and request additional manpower from the Administration as and when necessary.</p>	
003840 - 004319	Chairman Mr TANG Ka-piu Administration Judiciary Administration	<p>Mr TANG Ka-piu enquired –</p> <p>(a) whether the Tribunal would encourage litigants to use mediation to resolve their disputes; and</p> <p>(b) about the appointment of CFI judges to the Tribunal.</p> <p>The Administration/Judiciary Administration responded that –</p> <p>(a) the Tribunal would encourage litigants to settle their disputes through mediation as appropriate. But, for cases brought before the Tribunal by the Commission, there might not be much room for mediation; and</p> <p>(b) section 135 of the CO provided that the Tribunal consisted of the judges of the CFI appointed in accordance with section 6 of the High Court Ordinance (Cap. 4), by virtue of their appointment as such judges. The Bill did not propose any changes to the arrangement.</p>	

Time marker	Speaker	Subject(s)	Action required
004320 - 005037	Chairman Mr LEE Cheuk-yan Administration Assistant Legal Adviser 2 ("ALA2") Judiciary Administration	<p>Mr LEE Cheuk-yan enquired whether individual persons could initiate proceedings before the Tribunal against anti-competitive activities.</p> <p>ALA2 sought elaboration on "follow-on right of action" as stipulated in section 110 of the CO.</p> <p>The Administration/Judiciary Administration responded that –</p> <p>(a) under the current legal framework, only the Commission could bring proceedings before the Tribunal for any alleged contravention of a competition rule. It could initiate investigation into a case either on receipt of complaints, on its own volition, or on referral from the Government, the CFI or the Tribunal;</p> <p>(b) the CO provided for the "follow-on right of action" to allow aggrieved parties to seek damages as a result of a contravention of a conduct rule so determined by the Tribunal. Any such aggrieved party had a right to bring follow-on actions to claim damages, regardless of whether the cause of action was the defendant's contravention, or involvement in a contravention, of a conduct rule;</p> <p>(c) the Tribunal would conduct its proceedings with as much informality as was consistent with attaining justice. Legal representation would not be a requirement in the proceedings before the Tribunal; and</p> <p>(d) the Judiciary might give directions/ assistance in procedures etc. to individuals/ undertakings involved in competition cases without legal representation as appropriate. However, given the impartiality of the Judiciary, litigants might need to seek legal advice on their own cases as necessary.</p>	
005038 - 010519	Chairman Mr Paul TSE Administration Judiciary Administration ALA2	Mr Paul TSE opined that the Administration should consider granting solicitors, instead of just solicitor advocates, rights of audience before the Tribunal to open up new opportunities for experienced and qualified solicitors as well as to enlarge the pool of solicitors who could advocate at the court so	Admin (paragraph 6(b) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		<p>that litigation work would become more competitive and the community could benefit from lower litigation costs.</p> <p>The Administration/Judiciary Administration responded that –</p> <p>(a) according to the recently amended Legal Practitioners Ordinance (Cap. 159), solicitors who had at least five years' post-qualification experience and satisfied further eligibility requirements might apply for higher rights of audience before the High Court and the Court of Final Appeal in civil proceedings, criminal proceedings, or both;</p> <p>(b) given that the Tribunal was a superior court of record, similar in status and operation to the CFI of the High Court, the mechanism for dealing with the granting of higher rights of audience to solicitors should apply to the Tribunal as well. As there might be transfer of proceedings between the CFI and the Tribunal, applying the same approach to both the CFI and the Tribunal would allow the same team of solicitors/barristers to follow up on a competition-related case which might be heard in the two courts, thereby possibly lowering legal costs;</p> <p>(c) the operation of the Tribunal would be very similar to that of the CFI where solicitors would have rights of audience in chambers hearings; and</p> <p>(d) the Hong Kong Bar Association ("the Bar Association") and the Law Society of Hong Kong ("the Law Society") were supportive of applying the existing mechanism in dealing with the granting of higher rights of audience to solicitors to the Tribunal.</p>	
010520 - 011756	Chairman Mr Paul TSE Administration Judiciary Administration ALA2	ALA2 briefed members on his letter dated 30 May 2014 to the Administration (CB(1)1591/13-14(02)) and the Administration's reply dated 11 June 2014 (CB(1)1602/13-14(01)).	

Time marker	Speaker	Subject(s)	Action required
		The Chairman requested the Judiciary Administration to provide the views submitted by the Bar Association and the Law Society on the Bill for members' reference.	Judiciary Administration (paragraph 6(a) of the minutes refers)
Clause-by-clause examination of the Bill (Marked-up copy of the Bill (LC Paper No. CB(1)1591/13-14(01)))			
011757 - 012319	Chairman Mr SIN Chung-kai Administration ALA2	<u>Clause 1 – Short title</u> Members raised no query. <u>Clause 2 – Enactments amended</u> Members raised no query.	
012401 - 013456	Chairman Mr Ronny TONG Mr SIN Chung-kai Administration ALA2 Judiciary Administration	<u>Clause 3 – Section 143 amended (powers of Tribunal)</u> Mr Ronny TONG expressed concern as to whether conferring some specific powers on the Tribunal under the Bill would limit or affect the general powers of the Tribunal which were already provided under the CO. ALA2 requested the Administration to consider expressly stating in the Bill that for the avoidance of doubt, the proposed new sections which conferred specific powers on the Tribunal were "without limiting" or "without affecting" the general powers of the Tribunal under the CO. Mr SIN Chung-kai sought clarification on whether the proposed amendments to the CO were recommended by the Judiciary or the Administration. The Administration/Judiciary Administration responded that – (a) the CO had adopted a general approach such that the Tribunal might generally follow the practice and procedure of the CFI, had the power to enforce its orders in the same way as a superior court of record and had the power to grant orders that the CFI was empowered to grant unless otherwise specified; and (b) as several areas in the CO had been identified to be not entirely clear as to	Admin (paragraph 6(c) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		<p>whether the Tribunal would have the specific powers of the CFI to grant remedies and relief in discharging its functions, the Administration and the Judiciary proposed to amend the CO to confer more specific powers on the Tribunal with a view to providing greater clarity and certainty that was required given the particular circumstances.</p>	
<p>013457 - 015109</p>	<p>Chairman Mrs Regina IP Mr Ronny TONG Administration Judiciary Administration ALA2</p>	<p><u>Clause 4 – Sections 151A, 151B and 151C added</u></p> <p>Mrs Regina IP enquired –</p> <p>(a) whether the term "person" in the proposed new section 151A referred to an "undertaking" or a "natural person"; and</p> <p>(b) whether there would be a redress system for a person who was prohibited by the Tribunal's order from leaving Hong Kong ("prohibition order") to make application for discharge of the prohibition order.</p> <p>The Administration/Judiciary Administration responded that –</p> <p>(a) the term "person" in the proposed new section 151A referred to a "natural person"; and</p> <p>(b) under the proposed new section 151A, the Tribunal must not make a prohibition order unless it was satisfied with the conditions specified therein. Decisions of the Tribunal were subject to appeal to the Court of Appeal as of right.</p> <p>Mr Ronny TONG requested the Administration to –</p> <p>(a) clarify whether it was the policy intent that the Tribunal had the jurisdiction to make an prohibition order if the person was associated with an undertaking (e.g. as a director) which had been determined to have contravened the CO and his/her absence from Hong Kong might be likely to obstruct or delay any judgment or order that might be given against the undertaking; and</p>	<p>Admin (paragraph 6(d) of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>(b) if the above was the policy intent, clarify whether the drafting of the proposed new section 151A(3)(d) could achieve this policy intent.</p> <p>ALA2 requested the Administration to provide information and relevant cases to illustrate the operation of the existing section 21B of the High Court Ordinance (Cap. 4) which was similar to the proposed new section 151A concerning an prohibition order.</p> <p>Mrs Regina IP further requested the Administration to clarify the meaning of "property" in the proposed new section 151A(1)(b)(ii), and in particular whether it included "intellectual property".</p>	<p>Admin (paragraph 6(e) of the minutes refers)</p> <p>Admin (paragraph 6(f) of the minutes refers)</p>
015110 - 015356	Chairman	Date of next meeting	