

## **Bills Committee on Competition (Amendment) Bill 2014**

### **Responses to follow-up questions arising from the previous meeting**

#### **Purpose**

This paper responds to views of deputations/ individuals on the Competition (Amendment) Bill 2014 (“Bill”) and questions raised by Members at the meeting of 30 June 2014.

#### **Response to views and concerns expressed by deputations/ individuals on the Competition (Amendment) Bill 2014**

2. Some deputations/ individuals questioned the need to introduce the Bill before the full implementation of the Competition Ordinance (“CO”)(Cap. 619). Soon after the enactment of the CO in 2012, the Administration has been working closely with the Competition Commission and the Judiciary on the phased implementation of the CO. The main purpose of the Bill is to amend the CO to give the Competition Tribunal (“Tribunal”) certain specific powers that are necessary to ensure the proper functioning of the Tribunal. The proposed provisions in the Bill conferring specific powers on the Tribunal and judicial officers are modelled on relevant provisions in the High Court Ordinance (“HCO”) (Cap. 4) conferring similar powers on the Court of First Instance (“CFI”). With a view to ensuring the operational readiness of the Tribunal in discharging its functions, it is essential to introduce these amendments before the full implementation of the CO.

3. There were views that some procedural protections should be afforded to a person affected by a prohibition order to be made by the Tribunal under the proposed section 151A. It should be noted that the power to make prohibition orders is currently available to the CFI and the District Court. The proposal to confer similar power on the Tribunal, which is a superior court of record established under the CO, is to ensure that the Tribunal can effectively enforce its judgment or order against payment of penalties, damages, costs or other amounts of money made under the CO, and to enable the Tribunal to make pre-judgment prohibition orders in a like manner as the CFI. By virtue of section 135 of the CO, all CFI judges will be members of the Tribunal. Therefore,

they should be fully aware of the human rights and other considerations on the making of any prohibition orders under the proposed section 151A.

4. Moreover, we propose that the same procedural safeguards currently available under the HCO should be afforded to a person affected by a prohibition order to be made under the CO. For instance, in order for the Tribunal to make a prohibition order, there must be probable cause for it to believe that the person is about to leave Hong Kong, and satisfaction of its judgment or order is likely to be obstructed or delayed. Also, in accordance with section 154 of the CO, any decision, determination or order of the Tribunal, including prohibition order, is subject to appeal to the Court of Appeal as of right.

5. As for the suggestion of adding to the procedural rules for the Tribunal (“Tribunal rules”) a provision similar to rule 62 of the United Kingdom Competition Appeal Tribunal Rules to set out clearly the judicial work that the registrars are allowed to perform, the Judiciary will take this suggestion into consideration in their preparation of the Tribunal rules. The Judiciary will soon consult the relevant legal professional bodies on the draft Tribunal rules.

## **Clause 6 – proposed new section 155A**

6. The term “fine” in the proposed section 155A(1)(c) refers to a fine imposed by the Tribunal. The policy intent of the proposed section 155A(1)(c) is to empower the Tribunal to enforce payment of any fines that may be imposed by the Tribunal. An example of such fine is where the Tribunal imposes a fine on a person guilty of contempt in a proceeding brought before the Tribunal. A pecuniary penalty and a financial penalty are “penalties” imposed by the Tribunal under sections 93 and 169 respectively. These penalties are specific to the provisions concerned in the CO. Having regard to the circumstances in which such “fine” and “penalty” arise under the CO, we consider that the term “fine” in the proposed section 155A(1)(c) could not be interpreted to include “penalty” in the proposed section 155A(1)(a) and (b).

7. The Chinese text of the proposed section 155A(1)(c) uses the term “其他罰款” to denote “fine” in the English text. The apparent discrepancy between the two texts is due to the fact that the terms “fine”, “pecuniary penalty” and “financial penalty” all have the same Chinese equivalent in the CO, i.e. “罰款”. Rendering “a fine imposed by the Tribunal” in the proposed section 155A(1)(c) into “審裁處施加的罰款”

would give the impression that this paragraph would cover “罰款” in the proposed section 155A(1)(a) and (b). The use of the term “其他罰款” in the Chinese text of the proposed section 155A(1)(c) is therefore considered necessary to differentiate the term “fine” from “pecuniary penalty” and “financial penalty” in the Chinese text of the proposed section 155A(1)(a) and (b) respectively. As there is no such ambiguity in the terms used in the English texts of the proposed section 155A(1)(a), (b) and (c), we consider that it is not necessary to amend the English text of section 155A(1)(c) to make it read as “any other fine imposed by the Tribunal”.

## **Clause 8 – proposed new section 156A**

8. We have reviewed the wording used in the Chinese text of the proposed section 156A(2), in particular the part for expressing the words “by or under” in English. The Chinese text of the provision is currently divided into two parts: the first part “審裁處的司法常務官，擁有根據第158條訂立的規則或任何其他法律賦予或委予該司法常務官的任何其他司法管轄權、特權、權力及職責...” reflects the English text for the part “The Registrar of the Tribunal has any other jurisdiction, privileges, powers and duties that may be conferred or imposed on him or her *by*...the rules of the Tribunal made under section 158 or any other law”; the second part “審裁處的司法常務官...亦擁有根據該等規則或法律賦予或委予該司法常務官的任何其他司法管轄權、特權、權力及職責” reflects the English text for the part “The Registrar of the Tribunal has any other jurisdiction, privileges, powers and duties that may be conferred or imposed on him or her... *under* the rules of the Tribunal made under section 158 or any other law”.

9. We consider that this formulation adopted for the Chinese text of the proposed section 156A(2) has clearly and accurately conveyed the meaning of the English equivalent, as well as expressing the distinction arising from the words “by or under” in English. The use of “由...或根據...” as the Chinese rendition of “by or under” in the textual context of this provision cannot achieve the same degree of clarity. For this reason, amendments to the Chinese text of the provision are considered not necessary. By way of reference, we note that similar formulation in Chinese for expressing the words “by or under” in English was used in section 6(2) of the West Kowloon Cultural District Authority Ordinance (Cap. 601).

## **Clause 11 – proposed new section 158A**

10. By virtue of the proposed section 156B, a senior deputy registrar and a deputy registrar of the Tribunal have all the jurisdiction and privileges conferred on the Registrar of the Tribunal, as well as exercising all the powers conferred and performing all the duties imposed on the Registrar of the Tribunal. The proposed section 156C also provides that temporary registrars of the Tribunal have all the jurisdiction, privileges, powers and duties of the Registrar of the Tribunal during the period for which he or she is appointed. Given the clear legal effect of these two proposed sections, we consider that a separate definition for “Registrar of the Tribunal” in the Bill is not necessary.

## **Clause 15**

11. For the sake of tidiness, we would propose amendments to the definition for “higher court of Hong Kong” in the Chinese text of Rule 2 of the Higher Rights of Audience Rules (Cap. 159AK), so as to include in the lead-in a reference to “審裁處”.

## **Clause 16**

12. In drafting clause 16, references have been made to the definition of “Tribunal” in section 2(1) of the CO, and to section 1(1)(c) in Part 1 and section 2 in Part 2 of Schedule 8 to the CO. It is also noted that in paragraph (zn) of Schedule 2 to the Electronic Transactions Ordinance (Cap. 553), the description “established by” has been used in relation to the Deposit Protection Appeals Tribunal. For these reasons, we consider that there is no need to amend the description “the Competition Tribunal established by the Competition Ordinance (Cap. 619)” in clause 16, which is legally in order and effective in achieving the policy intent.

## **Use of references to Registrar**

13. We have reviewed the use of references to “the Registrar” and “the Registrar, a senior deputy registrar and/or a deputy registrar” throughout the Bill. For the sake of tidiness, we will consider amending the relevant clauses in the Bill to achieve consistency in the use of the references.

**Advice sought**

14. Members are invited to note the content of this paper.

**Commerce and Economic Development Bureau  
The Judiciary Administration  
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