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**Report of the Bills Committee on
Competition (Amendment) Bill 2014**

Purpose

This paper reports on the deliberations of the Bills Committee on Competition (Amendment) Bill 2014 ("the Bills Committee").

Background

The Competition Ordinance

2. The Competition Ordinance (Cap. 619) ("the CO") was passed by the Legislative Council ("LegCo") on 14 June 2012 and published in the Gazette on 22 June 2012. The objective of the CO is to prohibit and deter "undertakings" in all sectors from adopting abusive or other anti-competitive conduct which has the object or effect of preventing, restricting and distorting competition in Hong Kong. In this context, an "undertaking" is defined as any entity, regardless of its legal status or the way in which it is financed, engaged in economic activity and includes a natural person engaged in economic activity.

3. The CO provides for general prohibitions in three major areas of anti-competitive conduct (described as the first conduct rule¹, the second conduct rule² and the merger rule³, which are collectively known as the "competition rules" in the CO) as well as the institutional arrangements and penalty provisions for their enforcement.

¹ The first conduct rule under section 6 prohibits undertakings from making or giving effect to agreements or decisions or engaging in concerted practices that have as their object or effect the prevention, restriction or distortion of competition in Hong Kong.

² The second conduct rule under section 21 prohibits undertakings that have a substantial degree of market power in a market from engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong.

³ The merger rule under section 3 of Schedule 7 prohibits mergers that have or are likely to have the effect of substantially lessening competition in Hong Kong. This rule only applies to mergers involving undertakings directly or indirectly holding carrier licences issued under the Telecommunications Ordinance (Cap. 106).

Competition Commission

4. The CO provides for a judicial enforcement model. The Competition Commission ("the Commission") is established as an independent statutory body under the CO to investigate into competition-related complaints and to bring proceedings before the Competition Tribunal ("the Tribunal") in respect of anti-competitive conduct either on receipt of complaints, on its own initiative, or on referral from the Government or a court. The Commission is also tasked to promote public understanding of the CO and the value of competition through public education work, to advise the Government on competition matters, etc..

Competition Tribunal

5. The Tribunal is established within the Judiciary as a superior court of record to hear and adjudicate competition cases brought by the Commission, follow-on private actions (brought by persons who have suffered loss or damage as a result of a contravention of a conduct rule), as well as applications for the review of certain determinations of the Commission, etc.. Decisions of the Tribunal are reviewable on appeals to the Court of Appeal ("CA"). Judges of the Court of First Instance ("CFI") will, by virtue of their appointments as CFI Judges, be members of the Tribunal.

6. On the recommendations of the Judicial Officers Recommendation Commission, the Chief Executive would appoint one member of the Tribunal to be the President of the Tribunal, and one other member to be the Deputy President. Their tenure would be between three years to five years, and they are eligible for re-appointment. The President of the Tribunal may appoint one or more members to hear and determine an application made to it.

7. The CO also provides that, among others, every Registrar, Senior Deputy Registrar and Deputy Registrar of the High Court, by virtue of that appointment, holds the corresponding office or position in the Tribunal.

8. The Tribunal may appoint assessors to assist in proceedings. The Tribunal is to conduct its proceedings with as much informality as is consistent with attaining justice. It may also decide its own procedures and may, so far as it thinks fit, follow the practice and procedure of CFI in the exercise of its civil jurisdiction.

9. The Tribunal is empowered to apply a full range of remedies for contravention of a competition rule. These include pecuniary penalties not exceeding 10% of the local turnover of the undertaking(s) in breach of the competition rule for each year of infringement, up to a maximum of three years; damages to aggrieved parties; interim injunction during investigations

or proceedings; termination or variation of an agreement or merger; and disqualification orders against directors who have contributed to the contravention of the competition rule. The Tribunal can only impose pecuniary penalty on application by the Commission.

Phased implementation of the Competition Ordinance

10. It has been the Administration's intention to implement the CO 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. This arrangement will enable the public and the business sector to familiarize themselves with the new legal requirements during the transitional period and make necessary adjustments to their business practices.

11. The Competition Ordinance (Commencement) Notice 2012 was gazetted on 23 November 2012. The provisions of the CO relating to the establishment of the Commission, the short title and commencement, interpretation, and the issue of guidelines by the Commission etc. came into operation on 18 January 2013. The provisions relating to the establishment of the Tribunal and part of the provisions relating to its operation commenced on 1 August 2013.

12. The rest of the CO relating to the prohibitions and the relevant penalty provisions will come into force only when all relevant preparatory work is completed. The preparatory work by the Commission includes its preparation of guidelines regarding the competition rules, block exemption orders, lodging of complaints, as well as investigations. As for the Judiciary, the Chief Judge of the High Court would, after consulting the President of the Tribunal, make rules regulating and prescribing the practice and procedure to be followed in the Tribunal. The Judiciary would also make other necessary arrangements to pave way for the full operation of the Tribunal.

13. The Chairperson and members of the Commission were appointed with effect from 1 May 2013. With the support of a seconded government team, the Commission has undertaken initial work to establish the Commission office, its internal procedures and financial and administrative systems, and set direction of work leading to full function of the Commission and the prospective full commencement of the CO. With the first batch of staff now in place, the Commission has moved from the initial establishment work to the preparation of various documents foreseen under the CO.

14. The Chief Executive appointed the President and Deputy President of the Tribunal in July 2013.

Proposed amendments to the Competition Ordinance

15. According to the Administration, since the enactment of the CO, the Administration and the Judiciary have been working closely to prepare for the phased implementation of the CO. One of the major tasks leading to the full implementation of the CO is to prepare for the full operation of the Tribunal. During the preparatory process, the Administration and the Judiciary have identified certain amendments to the CO and consequential amendments to other pieces of legislation, which are considered essential to the proper functioning of the Tribunal.

16. Against these considerations, the Administration introduced the Competition (Amendment) Bill 2014 ("the Bill") into LegCo on 14 May 2014. The Bill seeks to amend the CO to give the Tribunal certain specific powers, and provide for certain operational matters, that are considered by the Administration and the Judiciary to be necessary to ensure the proper functioning of the Tribunal, and to make miscellaneous amendments to other Ordinances.

Provisions of the Bill

17. The major proposed amendments in the Bill can be grouped into three categories which are summarized in the ensuing paragraphs. They do not directly involve the competition rules and the relevant penalty provisions in the CO.

(A) Proposed powers for the functioning of the Tribunal

18. The CO has adopted a general approach in providing for the powers, and the practice and procedure of the Tribunal with reference to those of CFI. The Administration has identified several areas in the CO where it is considered not entirely clear as to whether the Tribunal would have the specific powers of CFI to grant remedies and relief in discharging its functions. The Administration therefore proposes to amend the CO to confer more specific powers on the Tribunal with a view to providing greater clarity and certainty that is required given the particular circumstances. These powers include the power to enforce the orders of the Tribunal, the power to award interest on debts and damages and judgment debts, the power to award interest in respect of non-payment or late payment of penalties and fines under the CO, the power to prohibit debtors from leaving Hong Kong, and the power to reimburse a witness for expenses reasonably and properly incurred. The Administration also proposes to empower the Chief Judge to make rules, after consulting the President of the Tribunal, on the administration of suitors' funds.

(B) Proposed amendments relating to Registrars

19. The CO currently provides for a framework on the automatic appointment of the Tribunal's Registrar and other registrar-related positions (collectively referred to as "the Tribunal's registrars" hereinafter). The CO does not confer powers on the Tribunal's registrars to perform judicial duties. To ease the workload of members of the Tribunal and in line with the arrangements for the High Court, the Administration proposes to amend the CO to empower the Tribunal's registrars to perform judicial work under the CO similar to that performed by their counterparts in the High Court, and also to afford the Tribunal's registrars the privileges and immunities currently enjoyed by the registrars in the High Court. The Administration also proposes 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.

(C) Proposed amendments to other Ordinances

20. Amendments are proposed to a number of Ordinances with the aim to facilitate the future operation of the Tribunal (e.g. enabling the making of rules of court for prescribing the procedure in connection with the transfer of proceedings between CFI and the Tribunal), and to ensure consistency with the arrangements currently applicable to CFI and/or other courts/tribunals in general under these Ordinances. They include the High Court Ordinance (Cap. 4) ("the HCO"), the Evidence Ordinance (Cap. 8), the Legal Practitioners Ordinance (Cap. 159) ("the LPO"), the Higher Rights of Audience Rules (Cap. 159AK), the Electronic Transactions Ordinance (Cap. 553) and the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591).

Commencement

21. There is no commencement provision in the Bill. By virtue of section 20(2) of the Interpretation and General Clauses Ordinance (Cap. 1) ("the IGCO"), the Bill, if passed, would come into operation on the day it is published in the Gazette as an ordinance.

The Bills Committee

22. At the House Committee meeting on 16 May 2014, members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**. Under the chairmanship of

Hon Andrew LEUNG Kwan-yuen, the Bills Committee has held two meetings to discuss the Bill with the Administration and received views from the public at one of the meetings. A list of the deputations and individuals who have submitted views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

23. The Bills Committee is in support of the Bill to confer on the Tribunal as well as its members and judicial officers specific powers similar to those exercised by the judges and judicial officers of CFI in respect of civil proceedings, so as to ensure the proper functioning of the Tribunal upon the full commencement of the CO.

24. The deliberations of the Bills Committee and the Administration's response are set out below.

General powers of the Tribunal

25. The Bills Committee notes that the CO has adopted a general approach in providing for the powers, practice and procedure of the Tribunal. Under the CO, the Tribunal may generally follow the practice and procedure of CFI, has the power to enforce its orders in the same way as a superior court of record, and has the power to grant orders that the CFI is empowered to grant, unless specifically provided otherwise by the rules of the Tribunal or the CO.

26. Members have expressed concern as to whether by conferring some specific powers on the Tribunal under the Bill, the general powers of the Tribunal which are already provided under the CO would be limited or affected. The Administration is requested to consider expressly stating in the Bill that for the avoidance of doubt, the proposed new sections which confer specific powers on the Tribunal are "without limiting" or "without affecting" the general powers of the Tribunal which already exist under the CO, such as sections 142 to 144.

27. The Administration has responded that despite the general approach adopted in the CO, there are several areas in the CO where it is not entirely clear as to whether the Tribunal would have the specific powers of CFI in discharging its functions. For the sake of certainty and clarity, the proposed provisions in the Bill are introduced into the CO to specifically provide for the Tribunal's powers to be exercised in particular circumstances. The proposed provisions should be interpreted as to supplement the existing provisions which set out the general powers of the Tribunal, rather than to limit their generality, and hence they would not affect the existing scope of the general powers of the Tribunal. The Administration therefore does not consider it

necessary to expressly state that the proposed provisions are made "without limiting" or "without affecting" the general powers of the Tribunal.

28. The Administration has further advised that a similar approach was adopted in the Lands Tribunal Ordinance (Cap. 17) ("the LTO"), where provisions providing for the general powers of the Lands Tribunal are supplemented by provisions conferring specific powers. Section 12B of the LTO is an example. It provides that the Lands Tribunal shall have the specific power to include interest in any debt or damages for which judgment is given. Notwithstanding that section 8(9) of the LTO confers on the Lands Tribunal general power as CFI in the exercise of its jurisdiction to grant remedies and reliefs, section 12B of the LTO was made with no express wording that the provision is "without limiting" or "without affecting" the general powers of the Lands Tribunal.

Order prohibiting departure from Hong Kong

29. On the proposed new sections 151A, 151B and 151C which empower the Tribunal to make an order prohibiting a person from leaving Hong Kong ("prohibition order"), members have requested the Administration to clarify whether it is the policy intent to grant the Tribunal the jurisdiction to make a prohibition order against a person associated with an undertaking (e.g. as a director) which has been determined to have contravened the CO and his/her absence from Hong Kong may be likely to obstruct or delay any judgment or order that may be given against the undertaking.

30. The Administration has explained that the proposed new sections 151A, 151B and 151C on the prohibition order are modelled on section 21B of the HCO. The policy intent is that the Tribunal would follow the existing practice of CFI with regard to the operation of section 21B of the HCO in the exercise of the Tribunal's powers under the relevant proposed sections. A prohibition order can only be made against a natural person.

31. As regards the circumstances in which a prohibition order will be made by the Tribunal, the Administration has advised that it is noted from case authorities on the application of section 21B of the HCO that a prohibition order may be made against a person associated with a company (e.g. director or shareholder) only if he is also a party to the cause of action against the company, e.g. he is joined as a defendant to the proceedings⁴. In other words, under the proposed new section 151A, a prohibition order cannot be made against a person associated with a company simply because there is an order or a civil claim against the company arising from its contravention of a competition rule.

⁴ See *REM Assets Ltd v. MIR Investments Ltd*, HCA 626 of 2008

32. The Bills Committee notes some deputations' views that procedural safeguards should be afforded to a person affected by a prohibition order made by the Tribunal under the proposed new section 151A. Members have also asked whether there will be an appeal mechanism for a person who has been prohibited by the Tribunal's order from leaving Hong Kong to make application for discharge of the prohibition order.

33. The Administration has responded that the power to make prohibition orders is currently available to CFI and the District Court. The proposal to confer a 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 for the 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 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 new section 151A.

34. Besides, the Administration has proposed 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 CA as of right.

35. The Bills Committee also notes that some deputations have suggested adding to the procedural rules of 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. As advised by the Administration, the Judiciary would take this suggestion into consideration in their preparation of the Tribunal rules and the Judiciary would soon consult the relevant legal professional bodies on the draft Tribunal rules.

Meaning of "property"

36. Members have enquired about the meaning of "property" in the proposed new section 151A(1)(b)(ii), and in particular whether it includes intellectual property. The Administration has advised that the CO does not provide for a definition of "property". Under such circumstances, the relevant

definition in the IGCO applies. Section 3 of the IGCO defines "property" as follows –

"property (財產) includes-

- (a) money, goods, choses in action and land; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a) of this definition".

37. According to the Administration, section 3 of the IGCO only provides a non-exhaustive list as to what "property" includes. Despite the absence of an express reference to "intellectual property", the definition of "property" in section 3 of the IGCO could be interpreted as to cover intangible, personal and moveable property such as intellectual property.

Duration and discharge of prohibition order

38. Noting that under the proposed new section 151B(3), the Tribunal may, on application by a person on whose application a prohibition order is made, renew a prohibition order, the Bills Committee has sought clarification as to whether there is any limit on the number of times for renewal of a prohibition order. The Administration has responded that there is no limit on the number of times for which a prohibition order can be renewed, so long as the relevant conditions in the proposed new section 151A for the making of the prohibition order are met.

39. The Bills Committee also notes that under the proposed new section 151A(5), a copy of the prohibition order and a copy of any other ancillary order must be served on the Director of Immigration, the Commissioner of Police and the person against whom the prohibition order is made (if the person can be found). Members have enquired why a notice that the prohibition order is no longer required must be served on the Director of Immigration, but not on the Commissioner of Police, as soon as reasonably possible under the proposed new section 151B(6).

40. The Administration has explained that under the proposed new section 151A(5), the applicant of a prohibition order, after having obtained such order, is required to serve a copy on the Director of Immigration and the Commissioner of Police. In the event where the person against whom the prohibition order is made attempts to and insists on leaving Hong Kong in contravention of the prohibition order, front-line staff of the Immigration Department responsible for controlling the movement of people at the control

points may seek assistance from the Police in arresting the person concerned. The Police may need to check if the prohibition order has been served on them before taking actions.

41. In the case where a prohibition order is no longer required, the person on whose application the prohibition order is made is required to serve a notice only on the Director of Immigration under the proposed new section 151B(6). Since assistance from the Police would not be required by front-line staff of the Immigration Department under such circumstances, it is therefore considered not necessary to require a notice to be served on the Commissioner of Police.

Interest on debts and damages

42. Clause 5 adds proposed new sections 153A and 153B to the CO to empower the Tribunal to award interest on debts and damages for which judgment is given and to provide that judgment debts are to carry simple interest. Noting that the provisions relating to interest on claims for debt and damages in section 48 of the HCO are subject to rules of court, the Bills Committee has requested for clarification as to whether the rules of the Tribunal to be made under section 158 of the CO would have any provisions relating to interest on debts and damages.

43. According to the Administration, no specific rules on the interest rates are stipulated in the Rules of the High Court (Cap. 4A) ("RHC") at present. There are, however, rules in RHC providing for some special treatment of interest rates in the context of sanctioned offers or payment (e.g. Order 22, rules 23(2), 24(2) and 26 of RHC). There are also rules in RHC requiring any claims for interest to be pleaded (Order 18, rule 8(4) of RHC). The Judiciary is preparing the draft Tribunal rules under section 158 of the CO. While the Judiciary currently does not have intention to include specific provisions on interest rates in the Tribunal rules, it is considering making reference to the rules of RHC in the Tribunal rules where appropriate, so that the same arrangements in respect of interest rates will be applicable to both CFI and the Tribunal.

44. In response to the Bills Committee's request and for the purpose of greater clarity and certainty, the Administration will move Committee Stage amendments ("CSAs") to add the phrase "subject to the rules made under section 158" to the proposed new section 153A, given the policy intent that the payment of interest may be subject to the Tribunal rules to be made under section 158 of the CO.

Higher rights of audience

Granting rights of audience before the Tribunal to solicitors

45. The Bills Committee notes that at present, solicitors who satisfy the eligibility criteria under the LPO may apply to the Higher Rights Assessment Board established under the LPO for higher rights of audience, i.e. rights of audience before the High Court and the Court of Final Appeal in civil proceedings, criminal proceedings or both. Given the status of the Tribunal as a superior court of record and the possible transfer of cases (in part or in whole) between CFI and the Tribunal, and to enable a case be handled by the same team of solicitors/barristers even after the transfer, the Administration has proposed introducing consequential amendments to section 39H(3) of the LPO so that solicitor advocates granted with the higher rights of audience before the High Court and the Court of Final Appeal in civil proceedings should also be granted similar rights before the Tribunal.

46. Members have suggested that the Administration should consider granting solicitors, instead of only solicitor advocates, the rights of audience before the Tribunal. They consider that this can open up new opportunities for experienced and qualified solicitors as well as enlarge the pool of solicitors who can advocate at the court so that litigation work would become more competitive and the community can benefit from lower litigation costs.

47. The Administration has advised that the questions as to whether the solicitors' then existing rights of audience should be extended and, if so, the mechanism by which such extended rights of audience should be granted, had been extensively deliberated in LegCo during the scrutiny of the Legal Practitioners (Amendment) Bill 2009 which sought to introduce the new Part IIIB to the LPO. The Administration has highlighted that the present scheme endorsed by LegCo in 2010, whereby only solicitors fulfilling the relevant requirements as set out in Part IIIB of the LPO and its subsidiary legislation may be granted by the Higher Rights Assessment Board rights of audience before the High Court and the Court of Final Appeal, represents a fine balance among competing interests.

48. According to the Administration, even though section 144(3) of the CO provides that the Tribunal is to conduct its proceedings with as much informality as is consistent with attaining justice, this is not considered to be a valid ground for making any exceptional arrangement for all solicitors, rather than solicitor advocates only, to have the rights of audience before the Tribunal which is pitched at the level of CFI. In fact, section 144(1) of the CO directs that while the Tribunal may decide its own procedures, it may follow the practice and procedure of CFI and for this purpose has the same jurisdiction, powers and duties of CFI.

49. The Administration has stressed that there must be the highest standards of advocacy before the superior courts. This is essential to the administration of justice in an adversarial system. Cases to be handled by the Tribunal are likely to be similar in nature, scale and complexity as the complicated commercial cases in CFI. It is considered to be essential that only practitioners with the necessary experience and expertise in advocacy be granted the rights of audience before the Tribunal.

50. The Administration has further advised that its present proposal of extending solicitors advocates' higher rights of audience to the Tribunal is consistent with and is a simple reflection of the present policy relating to higher rights of audience. The present proposal would also enable the same team of solicitors/barristers to handle a case which may be transferred between CFI and the Tribunal in part or in whole (as provided under sections 113 and 114 of the CO). The Bar Association and the Law Society did not object to the proposal in late 2013 during the Judiciary Administration's consultation with them on the proposed legislative amendments now included in the Bill. Following the arrangements in CFI, solicitors will also be given rights of audience in the Tribunal for hearings in chambers.

Miscellaneous amendment

51. Clause 15 of the Bill proposes to amend the definition of "higher court of Hong Kong" in Rule 2 of the Higher Rights of Audience Rules (Cap. 159AK). To improve the drafting of the proposed amendment, the Legal Adviser to the Bills Committee ("the Legal Adviser") has suggested that the Administration should consider amending the Chinese text of the definition of *higher court of Hong Kong* in Rule 2 of Cap. 159AK to read "較高級法院 (higher court of Hong Kong) 指以下任何法庭、法院或審裁處 –". The Administration has responded that for the sake of tidiness, it will propose CSAs to the definition of "higher court of Hong Kong" in the Chinese text of Rule 2 of Cap. 159AK to this effect.

Operation of the Tribunal

52. The Bills Committee has sought elaboration on the operation of the Tribunal and whether legal representation is required in the proceedings before the Tribunal. Members are concerned that the costs of legal proceedings before the Tribunal may impose a huge financial burden on small and medium enterprises ("SMEs") involved in competition cases.

53. The Administration has advised that the Tribunal would conduct its proceedings with as much informality as is 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 CFI, legal representation is not a requirement in the conduct of legal proceedings before the Tribunal.

54. On members' question of whether litigation can be instigated by individual persons to the Tribunal, the Administration has explained that under the current legal framework, only the Commission can bring proceedings before the Tribunal for any alleged contravention of a competition rule. It can initiate investigation into a case either on receipt of complaints, on its own volition, or on referral from the Government, CFI or the Tribunal. On the other hand, the CO provides for the "follow-on right of action" to allow aggrieved parties to seek damages as a result of a contravention of a conduct rule. Any such aggrieved party has a right to bring follow-on actions to claim damages.

55. Members have also expressed concern that some SMEs may be caught inadvertently by the CO as the general prohibition against anti-competitive activities is difficult for them to understand and comply with. The Administration has responded that the Commission is drafting guidelines to elaborate on the key elements of the general prohibitions of the CO and will reach out to the general public and the business sector to enhance their understanding of how the CO would be interpreted and applied. Besides, the Judiciary may give directions or assistance in procedures etc. to individuals/undertakings involved in competition cases without legal representation as appropriate. However, given the impartiality of the Judiciary, litigants may need to seek legal advice on their own cases as necessary.

Registrars of the Tribunal

56. Members have expressed concerns 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. They consider that insufficient judicial manpower within the Tribunal may lead to a long waiting and hearing time for competition cases brought before the Tribunal.

57. As advised by the Administration, the implementation of the CO may 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, have been created to support the establishment and operation of the Tribunal. As the Tribunal may

generally follow the practice and procedure of CFI and there is a mechanism allowing transfer of proceedings between CFI and the Tribunal subject to the decision of the courts, it is 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.

58. 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. The President and Deputy President of the Tribunal will prioritize the handling of competition cases depending on factors such as the urgency of individual cases. Depending on the actual caseload, other CFI judges may also be deployed to hear competition cases brought before the Tribunal. The Judiciary Administration would also keep the workload and staffing situation of the Tribunal under review and request additional manpower from the Administration as and when necessary.

59. Noting that there are inconsistencies in the use of references to "the Registrar" in the Bill, the Bills Committee has requested the Administration to review the use of references to "the Registrar" alone and references to "the Registrar, a senior deputy registrar and/or a deputy registrar" throughout the Bill. In the light of the Bills Committee's concerns, the Administration will move CSAs to clauses 4 and 8. The Administration has explained that as it is considered that by virtue of the proposed new sections 156B(2) and (4), a senior deputy registrar and a deputy registrar of the Tribunal would have all the jurisdiction and privileges, as well as exercise the powers and perform the duties of the Registrar of the Tribunal, references to the terms "senior deputy registrar and/or deputy registrar" could be removed to achieve consistency in the use of references throughout the Bill.

Other drafting issues

60. The Bills Committee has also examined the drafting of the provisions of the Bill. Members note that in clause 6 of the Bill, the English text of the proposed new section 155A(1)(c) is "a fine imposed by the Tribunal" whereas the Chinese text uses the term "其他罰款" to denote "fine" in the English text. As suggested by the Legal Adviser, the Administration has been requested to consider amending the English text of this section to "any other fine imposed by the Tribunal" to tally with the Chinese text.

61. The Administration has responded that 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 rendition in the CO, i.e. "罰款". Rendering "a fine imposed by the Tribunal" in the proposed new

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 new section 155A(1)(a) and (b). The use of the term "其他罰款" in the Chinese text of the proposed new 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 new section 155A(1)(a) and (b) respectively. As there is no such ambiguity in the terms used in the English text of the proposed new section 155A(1)(a), (b) and (c), the Administration considers that it is not necessary to amend the English text of section 155A(1)(c) to make it read "any other fine imposed by the Tribunal".

62. As suggested by the Legal Adviser, the Bills Committee has also requested the Administration to consider amending the Chinese text of the proposed new section 156A(2) in clause 8 to make it easier to understand, in particular the part for expressing the words "by or under" in English to better reflect the meaning of the English text, with reference to the use of "由.....或根據....." as the Chinese rendition of "by or under" in other Ordinances.

63. The Administration has explained that the Chinese text of the proposed new section 156A(2) 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".

64. The Administration considers that the above formulation adopted for the Chinese text of the proposed new 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. The Administration has further advised that similar formulation in Chinese for expressing the words "by or under" in English is used in section 6(2) of the West Kowloon Cultural District Authority Ordinance (Cap. 601).

Committee Stage amendments

65. A full set of CSAs to be moved by the Administration and agreed by the Bills Committee, as mentioned in paragraphs 44, 51 and 59 above, is in **Appendix III**.

Resumption of the Second Reading debate

66. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at a future Council meeting.

Advice sought

67. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 1
Legislative Council Secretariat
8 October 2014

Bills Committee on Competition (Amendment) Bill 2014

Membership list

Chairman Hon Andrew LEUNG Kwan-yuen, GBS, JP

Members Hon Albert HO Chun-yan
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 Cyd HO Sau-lan, JP
Hon Mrs Regina IP LAU Suk-yeet, 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, JP
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon TANG Ka-piu, JP
Hon CHUNG Kwok-pan

(Total : 21 Members)

Clerk Ms Miranda HON

Legal Adviser Mr Timothy TSO

Appendix II

Bills Committee on Competition (Amendment) Bill 2014

List of deputations and individuals who have submitted views to the Bills Committee

1. The Lion Rock Institute
2. Miss Amanda QUEIROZ
3. 人手比例不符最低工資關注組
4. Hong Kong Bar Association

Competition (Amendment) Bill 2014

Committee Stage

Amendments to be moved by the Secretary for
Commerce and Economic Development

<u>Clause</u>	<u>Amendment Proposed</u>
4	<ul style="list-style-type: none"> (a) In the proposed section 151A(6), in the definition of <i>Tribunal</i>, by deleting “, a senior deputy registrar and a deputy registrar”. (b) In the proposed section 151B(9), in the definition of <i>Tribunal</i>, by deleting “, a senior deputy registrar and a deputy registrar”. (c) In the proposed section 151C(5), in the definition of <i>Tribunal</i>, by deleting “, a senior deputy registrar and a deputy registrar”.
5	<p>In the proposed section 153A, by adding—</p> <ul style="list-style-type: none"> “(7) Subsections (1), (2) and (3) are subject to the rules of the Tribunal made under section 158.”.
8	<ul style="list-style-type: none"> (a) In the proposed section 156D— <ul style="list-style-type: none"> (i) in the heading, by deleting “etc.”; (ii) in subsection (1), by deleting “, a senior deputy registrar or a deputy registrar”; (iii) in subsection (1), by deleting “, the senior deputy registrar or the deputy registrar”; (iv) in subsection (2), by deleting “, a senior deputy registrar or a deputy registrar”;

(v) in subsection (2)(b), by deleting “, the senior deputy registrar or deputy registrar”.

(b) In the proposed section 156E—

(i) in the heading, by deleting “etc.”;

(ii) in subsection (1), by deleting “, a senior deputy registrar or a deputy registrar”.

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(a) By renumbering the clause as clause 15(2).

(b) By adding—

“(1) Rule 2, Chinese text, definition of **較高級法院**, after “任何”—

Add

“審裁處、”.