

立法會
Legislative Council

LC Paper No. CB(4)746/14-15
(These minutes have been
seen by the Administration)

Ref : CB4/SS/6/14

**Subcommittee on Four Subsidiary Legislation Related to Competition
Ordinance Gazetted on 18 February 2015**

**Minutes of the second meeting held on
Tuesday, 24 March 2015, at 11:00 am
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon Andrew LEUNG Kwan-yuen, GBS, JP(Chairman)
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan, JP
Hon Paul TSE Wai-chun, JP
Hon Dennis KWOK
Hon Martin LIAO Cheung-kong, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kiwok, BBS, MH, JP

Members absent : Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Charles Peter MOK, JP
Hon SIN Chung-kai, SBS, JP
Hon CHUNG Kwok-pan

Public Officers attending : Agenda item II

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

Mr Sam HUI
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and
Industry)2

Mr Jonathan LUK
Government Counsel
Department of Justice

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (4)5

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Shirley TAM
Senior Council Secretary (4)5

Ms Zoe TONG
Legislative Assistant (4)5

Action

I. Application for late membership

(LC Paper No. CB(4)656/14-15(01) -- Letter dated 16 March 2015
from Hon Ronny TONG
Ka-wah (Chinese version only))

The Chairman referred to the letter from Mr Ronny TONG (LC Paper No. CB(4)656/14-15(01)) regarding his application for late membership of the Subcommittee. Members agreed and the Chairman said that the application was accepted.

II. Meeting with the Administration

(L.N. 36 of 2015 -- Competition (Application of
Provisions) Regulation

L.N. 37 of 2015 -- Competition (Disapplication of
Provisions) Regulation

Action

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|---------------------------------|---|
| L.N. 38 of 2015 | -- Competition (Turnover) Regulation |
| L.N. 39 of 2015 | -- Competition Ordinance (Commencement) Notice 2015 |
| File Ref.: CITB CR 05/62/25/14 | -- Legislative Council Brief issued by Commerce and Economic Development Bureau on Competition (Application of Provisions) Regulation and Competition (Disapplication of Provisions) Regulation |
| File Ref.: CITB CR 05/62/25/14 | -- Legislative Council Brief issued by Commerce and Economic Development Bureau on Competition (Turnover) Regulation and Competition Ordinance (Commencement) Notice 2015 |
| LC Paper No. LS41/14-15 | -- Legal Service Division Report on Subsidiary Legislation Gazetted on 18 February 2015 |
| LC Paper No. CB(4)640/14-15(01) | -- Letter from the Assistant Legal Adviser to the Administration dated 10 March 2015 |
| LC Paper No. CB(4)640/14-15(02) | -- Letter from the Administration dated 13 March 2015 in response to the Assistant Legal Adviser's letter |
| LC Paper No. CB(4)640/14-15(03) | -- Letter from the Administration to the Subcommittee dated 11 March 2015 |
| LC Paper No. CB(4)640/14-15(04) | -- Background brief prepared by the Legislative Council Secretariat |

Action

LC Paper No. CB(4)685/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 16 March 2015

LC Paper No. CB(4)685/14-15(02) -- Administration's response to issues raised at the meeting on 16 March 2015)

2. The Subcommittee deliberated (index of proceedings attached at the **Annex**).

3. Members supported the Administration's proposed amendments to the Competition (Turnover) Regulation ("C(T)R").

(Post-meeting note: The marked-up version of the Administration's proposed amendments to C(T)R was issued to members vide LC Paper No. CB(4)695/14-15(01) on 24 March 2015.)

4. The Chairman concluded that the Subcommittee had completed scrutiny of the four items of subsidiary legislation. Members noted that the Chairman had given a verbal report to the House Committee at its meeting on 20 March 2015 and he would move a motion at the Council meeting of 25 March 2015 to extend the scrutiny period of the four items of subsidiary legislation to the Council meeting of 15 April 2015.

5. Members and the Administration noted that subject to the passage of the resolution to extend the scrutiny period, the deadline for giving notice to move amendments to the four items of subsidiary legislation was 8 April 2015.

III. Any other business

6. There being no other business, the meeting ended at 11:30 pm.

**Proceedings of the second meeting of the Subcommittee
on Four Subsidiary Legislation Related to Competition Ordinance Gazetted on 18 February 2015
on Tuesday, 24 March 2015, at 11:00 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I –Application for late membership			
000418 – 000522	Chairman Mr Ronny TONG	Discussion on the application of Mr Ronny TONG for late membership	
Agenda item II –Meeting with the Administration			
000523 – 000841	Chairman Administration	Briefing by the Administration on its response to issues raised at the meeting on 16 March 2015 on the Competition (Turnover) Regulation ("C(T)R") (LC Paper No. CB(4)685/14-15(02))	
000842 – 001252	Chairman Assistant Legal Adviser 2 ("ALA2") Administration Mr Ronny TONG	<p>ALA2 drew members' attention to the fact that according to the relevant Order of the United Kingdom and Singapore, the applicable turnover of an undertaking was limited to "the amounts derived by the undertaking from the sale of products and the provision of services falling within the undertaking's ordinary activities" (LC Paper No. CB(4)640/14-15(02)). However, C(T)R did not have such a reference relating to the "sale of goods and the provision of services".</p> <p>The Administration explained that it had made reference to the Hong Kong Accounting Standard ("HKAS") 18 in making C(T)R, and revenue from "ordinary activities" included revenue arising from the following transactions and events:</p> <ul style="list-style-type: none"> (a) the sale of goods; (b) the rendering of services; and (c) the use by others of entity assets yielding interest, royalties and dividends. <p>The Administration advised that to make it clear for the purpose of C(T)R, it would propose to add a new subsection under section 2 to the effect that the total gross revenues of an undertaking were to be calculated in accordance with generally accepted accounting principles.</p> <p>Mr TONG considered the proposed amendments acceptable.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>In response to ALA2's further enquiries, the Administration clarified that the policy intent of C(T)R in the calculation of an undertaking's turnover was not for it to be limited only to revenue arising from the sale of goods and the provision of services.</p>	
001253 – 002016	<p>Chairman Administration ALA2 Mr Ronny TONG</p>	<p>Briefing by the Administration on the marked-up version of the Administration's proposed amendments to C(T)R (LC Paper No. CB(4)695/14-15(01))</p> <p>Discussion on local and overseas legislation/case law on the definition of "turnover" and interpretation of the term "ordinary activities"</p> <p>In response to ALA2, the Administration advised that the proposed new section 2(4) under C(T)R was drafted with reference to similar provisions in existing legislation, such as section 7H of the Telecommunications Ordinance (Cap. 106) and section 17(2) of the Broadcasting Ordinance (Cap. 562).</p> <p>Mr TONG supported the proposed new section 2(4) which set out the framework of calculation of an undertaking's turnover which, in his opinion, would be subject to further refinement by the Competition Tribunal ("the Tribunal") having regard to the facts of the case in question.</p>	
002017 – 002759	<p>Chairman Mr Ronny TONG Administration ALA2</p>	<p>ALA pointed out that under both section 7H of Cap. 106 and section 17(2) of Cap. 562, the relevant accounting practice (consistent with generally accepted accounting principles) would in practice be specified. Moreover, in section 17(2) of Cap. 562, there is a reference to "generally accepted accounting principles <u>in Hong Kong</u>".</p> <p>The Administration explained that since Cap. 619 could regulate conduct of undertakings established in Hong Kong as well as outside Hong Kong, the proposed new section 2(4) was drafted so that it could be applicable to various types of undertakings, including those that were established outside Hong Kong which might not be subject to the accounting principles in Hong Kong.</p> <p>Mr TONG supported the present drafting which would allow more flexibility for the Tribunal to make appropriate judgments. He expected that the Tribunal would refer to Hong Kong's accounting</p>	

Time marker	Speaker	Subject(s)	Action required
		principles in cases involving Hong Kong's undertakings.	
Agenda item III – Any other business			
002800 – 003009	Chairman	Closing remarks	

Council Business Division 4
Legislative Council Secretariat
8 April 2015