

立法會
Legislative Council

LC Paper No. CB(4)1007/14-15
(These minutes have been seen
by the Judiciary Administration)

Ref : CB4/SS/8/14

**Subcommittee to Study the Proposed Subsidiary Legislation on the
Procedures to be Adopted by the Competition Tribunal**

**Minutes of the third meeting
held on Tuesday, 14 April 2015, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon Dennis KWOK (Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon SIN Chung-kai, SBS, JP
Hon TANG Ka-piu, JP
Hon CHUNG Kwok-pan
- Members absent** : Hon Ronny TONG Ka-wah, SC
Dr Hon CHIANG Lai-wan, JP
- Public Officers attending** : Item I
Judiciary Administration

Ms Wendy CHEUNG
Assistant Judiciary Administrator (Development)

Miss Yan LEUNG
Senior Administrative Officer (Development)

Department of Justice

Mr Francis KWAN
Senior Assistant Law Officer (Civil Law)

Mr David GROVER
Assistant Law Officer (Civil) (Acting)

Mr Allen LAI
Senior Government Counsel

Ms Phyllis POON
Senior Government Counsel

Mr Henry CHAN
Senior Government Counsel (Acting)

Miss Yvonne CHEUNG
Senior Government Counsel (Acting)

Clerk in attendance : Miss Mary SO
Chief Council Secretary (4)2

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Katrina WU
Senior Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant 4(2)

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I. Meeting with the Judiciary Administration and the Administration

Papers previously issued

- LC Paper No. CB(4)720/14-15(01) -- Judiciary Administration ("JA")'s paper entitled "Comments of the Legal Professional Bodies on the Draft Rules for the Competition Tribunal and the Judiciary's Responses"
- LC Paper No. CB(4)720/14-15(02) -- JA's paper entitled "Possible Further Streamlining of Procedures for Bringing Follow-on Actions to the Competition Tribunal"
- LC Paper No. CB(4)720/14-15(03) -- Letter dated 27 March 2015 from the Commerce and Economic Development Bureau ("CEDB") responding to the Legislative Council ("LegCo") Secretariat's letter dated 19 March 2015
- LC Paper No. CB(4)720/14-15(04) -- Letter dated 30 March 2015 from the Competition Commission responding to the LegCo Secretariat's letter dated 20 March 2015
- LC Paper No. CB(4)720/14-15(05) -- Marked-up of the proposed amendments to the Rules of the High Court (Cap. 4 sub. leg. A) prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)739/14-15(01) -- JA's letter dated 2 April 2015 responding to the matters raised in the letter dated 26 March 2015 from the Assistant Legal Adviser of the LegCo Secretariat

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- LC Paper No. CB(4)632/14-15(01) -- JA's paper entitled "Brief on the Proposed Competition Tribunal Rules and other Related Rules"
- LC Paper No. CB(4)632/14-15(02) -- JA's paper entitled "Comparison of the Key Differences in the Procedures of the Competition Tribunal and the Court of First Instance"
- LC Paper No. CB(4)632/14-15(03) -- JA's paper entitled "Broad Comparison of the Key Procedures of the Competition Tribunal, the Lands Tribunal and the Small Claims Tribunal"
- LC Paper No. CB(4)632/14-15(04) -- JA's paper entitled "Rules and Procedures Applicable to the Competition-related Courts in Selected Common Law Jurisdictions"
- LC Paper No. CB(4)632/14-15(05) -- Letter dated 5 March 2015 from the CEDB providing the following requested information:
- (a) relationship between the contravention of the First Conduct Rule under section 6 of the Competition Ordinance ("CO") (Cap. 619) and the Second Conduct Rule under section 21 of CO; and

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(b) procedures for members of the public to seek remedies due to contravention in the requirements of CO.

Annex B to LC Paper No. CB(4)493/14-15(03) for the meeting of the Panel on Administration of Justice and Legal Services on 16 February 2015 -- Marked-up of the proposed amendments to the Rules of the High Court (Cap. 4 sub. leg. A)

LC Paper No. CB(4)632/14-15(06) -- Background brief prepared by the LegCo Secretariat

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

Withdrawal of membership

2. The Chairman said that Dr Hon Priscilla LEUNG submitted a letter dated 31 March 2015 to the Secretariat informing her decision to withdraw from the Subcommittee.

Declaration of interest

3. Mr Andrew LEUNG declared that he was a member of the Competition Commission.

Discussion

Preliminary responses to issues raised at the last meeting on 9 April 2015

4. At the invitation of the Chairman, Assistant Judiciary Administrator (Development) ("AJA(Dev)") and Senior Assistant Law Officer (Civil Law) provided preliminary responses to the issues raised by members at the last meeting held on 9 April 2015 as follows:

- (a) a clearer definition would be provided for "originating document" under rule 2(1) of the draft Competition Tribunal Rules ("CTR");
- (b) a definition would be provided for "intervener" under rule 2(1) of the draft CTR;

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- (c) amendments would be made to rule 13(8) of the draft CTR to specify that a party must first apply for an order for substituted service before the Competition Tribunal ("the Tribunal") might make such an order and that such an application should be supported by affidavit;
- (d) the Judiciary considered that the precise scope of the term "sufficient interest" had to be developed by the Tribunal in its jurisprudence and thus did not see the need to provide for a definition of "sufficient interest" in the draft CTR. The expression "sufficient interest" had to be left for consideration and elucidation by reference to the facts of actual cases. Who had sufficient interest to intervene was sensitive to the precise issues raised in the particular case. The Tribunal would need to take into account the relationship between the parties and the matter to which the claim related and all other relevant circumstances. Similar to rule 20 of the draft CTR, the procedural rules of the competition-related court/tribunal in the overseas common law jurisdiction carrying this term, i.e. the United Kingdom ("UK"), did not have a definition of "sufficient interest" either. Rule 16 of the UK Competition Appeal Tribunal Rules 2003 ("CATR 2003") simply provided that "Any person who considers he has sufficient interest in the outcome may make a request to the Tribunal for permission to intervene in the proceedings". Although the Department of Justice ("DoJ") could not find any direct case authority on the meaning and scope of the expression of "sufficient interest" in the context of intervention in competition proceedings in the UK, DoJ noted from the discussions at the Committee Stage in the House of Lords for the enactment of CATR 2003 that Lord Simon of Highbury used representative bodies such as Consumers Associations or trades institutions as examples of persons who had "sufficient interest" to appeal a decision. Given members' concern, the Judiciary would consider whether it was appropriate to give any more guidance in the relevant Practice Direction ("PD");
- (e) the Judiciary had made it clear in the relevant draft PD that overseas lawyers must be properly admitted on an ad hoc basis before they could represent a party to the proceedings. Such an arrangement was agreed to by all the relevant stakeholders, particularly the Hong Kong Bar Association. But the Judiciary would review if the PD would need to be refined in the light of members' concern;
- (f) the Judiciary explained that Order 32A of the Rules of the High Court (Cap. 4A) ("RHC") would not apply to the Tribunal because

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only the Court of First Instance ("CFI") had power to make an order under section 27 of the High Court Ordinance (Cap. 4) against a vexatious litigant. There was no similar empowering provision in the Competition Ordinance ("CO"); and

- (g) a definition would be provided for an "unless" order referred to in rule 44(2)(g) of the draft CTR.

5. Mr Andrew LEUNG expressed caution that when reviewing the PD to see if more guidance should be given to the expression "sufficient interest", the Judiciary should be careful as not to allow a huge number of individual consumers without justifiable sufficient interest seeking to intervene in the proceedings of the Tribunal.

6. AJA(Dev) noted member's concern and added that the term "sufficient interest" was used in many other local legislation, such as in section 21K of Cap. 4, Order 53, rule 3(7) of the RHC in relation to applications for judicial review and section 85 of the CO about who might apply for review of reviewable determinations.

Scrutiny of the draft CTR

Rule 49 - Proceedings transferred from Tribunal to CFI; effects of transfer

DoJ 7. ALA2 said that rule 49(1) of the draft CTR provided that the Tribunal "may make further directions", whereas the phrase "may give any directions" was used in other provisions, e.g. rule 99(3) of the draft CTR. Senior Government Counsel ("SGC") agreed to rectify the inconsistencies.

Rule 56 - Right of persons (other than parties) to inspect, etc. certain documents filed in Tribunal

JA 8. AJA(Dev) advised that judgment given by the Tribunal would be made placed on its website, albeit confidential and sensitive information contained in the judgment might be redacted. At the request of the Chairman, AJA(Dev) undertook to review whether the PD needed to be revised to better facilitate an application under rule 56(2) of the draft CTR.

Rule 70 – Stay of execution of reviewable determination

Rule 71 – Application to state case for Court of Appeal

9. ALA2 said that although it was mentioned in rule 8(1) of the draft CTR that all interlocutory applications to the Tribunal must be made by filing a summons in Form 2 in the Schedule, it would be more user-friendly if the use of

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Form 2 in the Schedule could be explicitly spelt out in rules 70 and 71 and in other rules of the draft CTR which made reference to filing a summons if it was the policy intent that relevant proceedings should be commenced by filing Form 2. AJA(Dev) agreed to consider the suggestion.

JA

Rule 97 – Further conduct after reply or expiry of time for reply

10. ALA2 suggested that rule 97 of the draft CTR should specify that Order 25 of the RHC applied to the case management summons referred to in rule 97(1).

11. AJA(Dev) pointed out that rule 25(2) of the draft CTR already provided that Order 25 (except rules 1, 1A, 1C, 8, 10 and 11) of the RHC applied to the management of any Tribunal proceedings, including follow-on actions. It was strictly speaking not necessary for this to be repeated in rule 97 again. Nevertheless, she agreed to examine whether rule 97 of the draft CTR should be revised to specify that Order 25 (except rules 1, 1A, 1C, 8, 10 and 11) of the RHC applied to the case management summons referred to in the rule.

JA

Scrutiny of the proposed amendments to the RHC

12. ALA2 suggested and SGC agreed to add "the" before "Competition Tribunal" under rule 1(2) of Order 59 of the RHC for uniformity in the drafting of the subrule.

DoJ

13. ALA2 suggested and AJA(Dev) agreed to reproduce rule 2B(5) of Order 59 of the RHC, which provided that "An application under this rule must be made inter partes if the proceedings to which the judgment or order relates are inter partes", to the proposed new rule 2BA of Order 59 of the RHC for completeness sake.

JA

14. ALA2 suggested and SGC agreed to replace "in" in the phrase "in the Tribunal" in rule 3(3) of the proposed new Order 78B of the RHC with "by" so as to be consistent with the expression "made by the Competition Tribunal" appeared in the subrule and other provision(s) of the RHC.

DoJ

Scrutiny of the draft Competition Tribunal Fees Rules ("the Fees Rules")

15. Members noted that given the similarity in the nature of the proceedings in the Tribunal and those in the High Court, the Fees Rules were modelled on the High Court Fees Rules (Cap. 4D) as far as possible. Members further noted that a referential legislative approach for those fees items akin to those in Cap. 4D was proposed in Schedule 1 to the draft Fees Rules. Instead of prescribing the fee amounts for the respective items in the Tribunal's draft Fees

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Rules, a reference to the corresponding fee items in Cap. 4D was provided. By doing so, the Judiciary would always charge the same levels of fees for similar services/actions in both the High Court and the Tribunal. This would also reduce the legislative complexities in future amendment exercises.

16. In response to ALA2's enquiry about the reason(s) for specifying the fee amounts in Schedule 2 to the draft Fees Rules, SGC explained that the fees items in Schedule 2 were unique to the CO and the proceedings before the Tribunal.

Scrutiny of the draft Competition Tribunal Suitors' Funds Rules ("the Suitors' Funds Rules")

DoJ 17. ALA2 suggested and SGC agreed to replace "registrar", where it appeared in the draft Suitors' Funds Rules, with "Registrar" for consistency with other related Rules of the Tribunal.

18. ALA2 suggested amending the Chinese equivalent of "business day" referred to in rule 17(9) of the draft Suitors' Funds Rules from "工作日" to "辦公日" as used in section 261(7) of the Companies Ordinance (Cap. 622). SGC responded that the amendment was not necessary as "工作日" was an accurate label for the defined meaning.

19. With the enactment of the Administration of Justice (Miscellaneous Provisions) Ordinance 2014 in December 2014, ALA2 asked when the Judiciary would make the proposed amendments to the High Court Suitors' Funds Rules (Cap. 4B).

20. AJA(Dev) responded that the Judiciary planned to submit the proposed new and amended suitors' funds rules for various courts and tribunals, including the proposed amendments to Cap. 4B, to the relevant Panel as soon as possible and table them in the Legislative Council for negative vetting before the expiry of the current legislative session.

Conclusion

21. The Chairman concluded that the Subcommittee had completed scrutiny of the draft CTR, the proposed amendments to the RHC, the draft Fees Rules and the draft Suitors' Funds Rules.

II. Way forward

22. AJA(Dev) said that the proposed changes to the draft CTR, the proposed

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amendments to the RHC and the draft Suitors' Fund Rules, in both English and Chinese versions, should be ready for comments by ALA2 by the end of April 2015. As the draft amendments mainly concerned the drafting aspect of the rules and/or were technical in nature, members agreed that there would be no need to hold another meeting unless warranted.

23. There being no other business, the meeting ended at 10:08 am.

Council Business Division 4
Legislative Council Secretariat
15 May 2015

**Subcommittee to Study the Proposed Subsidiary Legislation on the
Procedures to be Adopted by the Competition Tribunal**

**Proceedings of the third meeting
held on Tuesday, 14 April 2015, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
000757 – 000923	Chairman	Withdrawal of membership	
Meeting with the Judiciary Administration ("JA") and the Administration			
000923- 003729	Chairman JA DoJ Hon LEUNG Kwan-yuen	Declaration of interest Preliminary responses by JA and DoJ to issues raised at the last meeting on 9 April 2015	
Continued scrutiny of the draft Competition Tribunal Rules ("CTR")			
003729- 003846-	Chairman JA	<i>Rules 46-48</i>	
003846- 003946	Chairman JA ALA2 DoJ	<i>Rule 49</i> DoJ agreed to rectify the inconsistencies in that rule 49(1) of the draft CTR provided that the Competition Tribunal ("the Tribunal") "may <u>make</u> further directions", whereas the phrase "may <u>give</u> any directions" was used in other provisions.	DoJ to rectify (paragraph 7 of the minutes refers)
003946- 004201	Chairman JA	<i>Rules 50-55</i>	
004201- 004335	Chairman JA DoJ	<i>Rule 56</i> JA undertook to review whether the Practice Direction on "Proceedings before the Tribunal" needed to be revised to better facilitate an application under rule 56(2) of the draft CTR.	JA to review (paragraph 8 of the minutes refers)
004335- 005006	Chairman JA Hon CHUNG Kwok-pun	<i>Rules 57-69</i>	

005006-005531	Chairman JA	<i>Rules 70-71</i> JA agreed to consider explicitly spell out in rules 70 and 71 and in other rules of the draft CTR which made reference to filing a summons that Form 2 in the Schedule should be used.	JA to consider (paragraph 9 of the minutes refers)
005531-010300	JA	<i>Rules 72 - 96</i>	
010300-010551	Chairman JA ALA2	<i>Rule 97</i> JA agreed to examine whether rule 97 of the draft CTR should be revised to specify that Order 25 (except rules 1, 1A, 1C, 8, 10 and 11) of the Rules of the High Court (Cap. 4A] ("RHC") applied to the case management summons referred to in the rule.	JA to examine (paragraph 11 of the minutes refers)
010551-010919	JA	<i>Rules 98 - 100</i> <i>Schedule</i>	
Scrutiny of the proposed amendments to the RHC			
010919-011050	JA	Briefing by JA	
011050-011216	Chairman JA ALA2 DoJ	<i>Rule 1, Order 59 of the HRC</i> DoJ agreed to add "the" before "Competition Tribunal" under rule 1(2) of Order 59 of the RHC for uniformity in the drafting of the subrule.	DoJ to amend (paragraph 12 of the minutes refers)
011216-011335	Chairman JA ALA2	<i>New Rule 2BA, Order 59 of the HRC</i> JA agreed to reproduce rule 2B(5) of Order 59 of the RHC, which provided that "An application under this rule must be made inter partes if the proceedings to which the judgment or order relates are inter partes", to the proposed new rule 2BA of Order 59 of the RHC for completeness sake.	JA to reproduce (paragraph 13 of the minutes refers)
011335-011645	JA	<i>Rules 2C and 4, Order 59 of the HRC</i> <i>New Order 78A of the HRC</i>	
011645-011805	Chairman JA ALA2	<i>New Order 78B of the HRC</i> DoJ agreed to replace "in" in the phrase "in the Tribunal" in rule 3(3) of the proposed new Order 78B of the RHC with "by" so as to be consistent with the expression "made by the Competition Tribunal" appeared in the subrule and other provision(s) of the RHC.	DoJ to replace (paragraph 14 of the minutes refers)

Scrutiny of the draft Competition Tribunal Fees Rules			
011805-011850	JA	Briefing by JA	
011850-012033	JA	<i>Rules 1-5</i>	
012033-012359	Chairman JA ALA2	<i>Schedules 1 and 2</i>	
Scrutiny of the draft Competition Tribunal Suitors' Fund Rules ("the Suitors' Funds Rules")			
012359-012524	JA	Briefing by JA	
012524-012533	JA	<i>Rule 1</i>	
012533-012611	Chairman JA ALA2 DoJ	<i>Rule 2</i> DoJ agreed to replace "registrar", where it appeared in the draft Suitors' Funds Rules, with "Registrar" for consistency with other related Rules of the Tribunal.	DoJ to replace (paragraph 17 of the minutes refers)
012611-012948	JA	<i>Rules 3-16</i>	
012948-013344	Chairman JA ALA2 DoJ Hon CHUNG Kwok-pan	<i>Rules 17</i>	
013344-013524	JA	<i>Rules 18-24</i> <i>Schedule</i>	
Way forward			
013524-013748	Chairman Hon WONG Ting-kwong JA	As the proposed changes to the draft rules mainly involved the drafting aspect of the rules and/or were technical in nature, members agreed that there would be no need to hold another meeting unless warranted.	