

**立法會**  
**Legislative Council**

LC Paper No. CB(4)370/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB4/PL/EDEV

**Panel on Economic Development**

**Minutes of meeting**  
**held on Monday, 24 November 2014, at 10:45 am**  
**in Conference Room 1 of the Legislative Council Complex**

- Members present** :
- Hon Jeffrey LAM Kin-fung, GBS, JP (Chairman)
  - Hon CHUNG Kwok-pan (Deputy Chairman)
  - Hon CHAN Kam-lam, SBS, JP
  - Hon Andrew LEUNG Kwan-yuen, GBS, JP
  - Hon WONG Ting-kwong, SBS, JP
  - Hon Ronny TONG Ka-wah, SC
  - Hon CHAN Kin-por, BBS, JP
  - Hon Albert CHAN Wai-yip
  - Hon James TIEN Pei-chun, GBS, JP
  - Hon Steven HO Chun-yin
  - Hon Frankie YICK Chi-ming
  - Hon YIU Si-wing
  - Hon Charles Peter MOK, JP
  - Hon CHAN Han-pan, JP
  - Hon Kenneth LEUNG
  - Hon Dennis KWOK
  - Hon Christopher CHEUNG Wah-fung, SBS, JP
  - Dr Hon Fernando CHEUNG Chiu-hung
  - Hon SIN Chung-kai, SBS, JP
  - Hon TANG Ka-piu, JP
  - Dr Hon CHIANG Lai-wan, JP
- Members absent** :
- Dr Hon LAM Tai-fai, SBS, JP
  - Dr Hon LEUNG Ka-lau
  - Hon Paul TSE Wai-chun, JP

Dr Hon Elizabeth QUAT, JP

**Public Officers attending** : **Agenda Item IV**

Mr Andrew HY WONG, JP  
Permanent Secretary for Commerce and Economic  
Development (Commerce, Industry and Tourism)

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

Miss Salina YAN, JP  
Deputy Secretary for Financial Services and the  
Treasury (Financial Services)1

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

**Agenda Item V**

**Office of the Communications Authority**

Mr Sanda CHEUK  
Assistant Director (Market and Competition)

Ms Elaine HUI  
Head, Market and Competition 1

**Attendance by invitation** : **Agenda Item V**

**Competition Commission**

Hon Anna WU, GBS, JP  
Chairperson

Dr Anthony William SEETO  
Member

Mr KWOK Kwok-chuen, BBS, JP  
Member

Mr Thomas CHENG  
Member

Ms Rose WEBB  
Senior Executive Director

Mr Timothy David LEAR  
Executive Director (Operations)

Mr Philip Francis MONAGHAN  
Executive Director (General Counsel)

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

**Staff in attendance :** Ms Shirley TAM  
Senior Council Secretary (4)5

Miss Mandy NG  
Council Secretary (4)5

Miss Shanice LOK  
Legislative Assistant (4)5

---

Action

**I. Confirmation of minutes of meeting**

(LC Paper No. CB(4)167/14-15 - Minutes of meeting held on  
27 October 2014)

The minutes of the meeting held on 27 October 2014 were confirmed.

**II. Information paper(s) issued since the last meeting**

(LC Paper No. CB(4)98/14-15(01) - Administration's paper on  
tables and graphs showing the  
import and retail prices of  
major oil products from  
October 2012 to September  
2014)

2. Members noted the above paper issued since the last regular meeting.

**III. Items for discussion at the next meeting**

(LC Paper No. CB(4)166/14-15(01) - List of outstanding items for discussion

LC Paper No. CB(4)166/14-15(02) - List of follow-up actions)

3. Members agreed to discuss the following items at the next regular meeting scheduled for Tuesday, 16 December 2014 –

(a) Subsidiary legislation to implement International Maritime Convention; and

(b) Annual tariff reviews with the two power companies.

4. Members noted that while the meeting was originally scheduled to start at 5:15 pm, the commencement time might be advanced to 4:30 pm subject to the availability of the Conference Room. The Clerk would issue the notice of meeting after confirming the final meeting schedule.

*(Post-meeting note: The meeting was finally scheduled to start at 4:30 pm and a notice of meeting was issued on 2 December 2014. At the advice of the Administration, item 3(a) has been re-titled as "Incorporating in local legislation the latest standards of the International Maritime Organization".)*

**IV. Subsidiary legislation proposals under the Competition Ordinance**

(LC Paper No. CB(4)166/14-15(03) - Administration's paper on subsidiary legislation proposals under the Competition Ordinance

LC Paper No. CB(4)166/14-15(04) - Paper on the subsidiary legislation proposals under the Competition Ordinance prepared by the Legislative Council Secretariat (background brief))

Presentation by the Administration

5. At the invitation of the Chairman, Permanent Secretary for Commerce and Economic Development (Commerce, Industry and Tourism) ("PSCIT") briefed members on the Administration's proposal to introduce three pieces of subsidiary legislation into the Legislative Council ("LegCo") as part of the preparatory work before the full implementation of the Competition Ordinance ("the Ordinance")(Cap. 619). The three pieces of subsidiary legislation were –

- (a) regulation to apply the key provisions of the Ordinance to six statutory bodies;
- (b) regulation to disapply the key provisions of the Ordinance to seven bodies which were not statutory bodies; and
- (c) regulation to be made on the determination of turnover of undertakings.

The details of the regulations were set out in the Administration's paper (LC Paper No. CB(4)166/14-15(03)).

Discussion

*Regulation to apply the key provisions of the Ordinance to six statutory bodies*

6. Mr Andrew LEUNG declared that he was a member of the Competition Commission ("the Commission") and also a member of the Federation of Hong Kong Industries ("FHKI"). Noting that the Administration intended to apply the key provisions of the Ordinance to six statutory bodies, including FHKI and the general committee of FHKI, Mr LEUNG relayed the objection of the general committee members of FHKI to the proposal. He pointed out that while the Chief Executive in Council might only make a regulation with respect to a statutory body if it satisfied the four criteria set out in section 5(2) of the Ordinance, FHKI and the general committee of FHKI did not meet all the criteria. In addition, FHKI and its general committee were established under the Federation of Hong Kong Industries Ordinance (Cap. 321) and there were three Government-appointed members in the general committee with one of whom being the Deputy Director-General of the Trade and Industry Department. Indeed, FHKI was actually responsible for taking forward the trade and industry policies formulated by the Government, and most of its activities, although some of them being commercial in nature, were related to public services and would not affect the market. Mr LEUNG requested the Administration to explain

further on its plan.

7. PSCIT explained that the Administration had previously communicated with the six statutory bodies concerned on its plan to make them subject to regulation of the Ordinance and taken note of the objection raised by FHKI. After reviewing FHKI's grounds and the four criteria to make the regulation in question set out in section 5(2) of the Ordinance, the Administration still considered that the conditions for applying the key provisions of the Ordinance to FHKI and its general committee continue to be valid. In particular, the Administration opined that the facilitation, training and counselling services provided by FHKI to the trade were trade facilitating services but not the "essential public service" as stipulated in section 5(2)(c) of the Ordinance.

8. Mr YIU Si-wing enquired about the circumstance under which the Administration would consider applying the key provisions of the Ordinance to statutory bodies to which they did not originally apply. PSCIT responded that the Administration had carried out a comprehensive review for all statutory bodies, with over 500 in total, in light of the implementation of Ordinance. The review concluded that the key provisions of the Ordinance should only apply to the six statutory bodies which had been included in the current proposal.

9. Noting that there were still a lot of discussions concerning the application of the key provisions of the Ordinance or otherwise to statutory bodies in Hong Kong, the Chairman enquired how the Administration would consider whether statutory bodies established in future should be subject to the regulation of the Ordinance or not. In addition, he also enquired how the Administration would handle the situation where a private company collaborated with a statutory body in carrying out certain activities which were considered contravening the Ordinance, and that the private company might be liable to penalty but the statutory body concerned would be immune.

10. In reply, PSCIT advised that statutory bodies should adhere to the competition principle and rectify any of its anti-competitive behaviour despite that the key provisions of the Ordinance did not apply to them. The Competition Policy Advisory Group, chaired by the Financial Secretary, was responsible for investigating into competition-related complaints relating to those parties not subject to the key provisions of the Ordinance, including those made against the statutory bodies. He added that the Administration would also make similar regulations to apply the key provisions of the Ordinance to those newly established statutory bodies if they satisfied the four criteria set out in section 5(2) of the Ordinance.

11. Mr TANG Ka-piu enquired whether the social enterprises established by charitable organizations which were statutory bodies would also enjoy the same status under the Ordinance, i.e. the key provisions did not apply to them. PSCIT replied that the dis-application status given to statutory bodies would not be extended to the subsidiaries of those statutory bodies.

*Regulation to disapply the key provisions of the Ordinance to bodies which were not statutory bodies*

12. Mr CHAN Kam-lam expressed the support of Members belonging to Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") for the proposed dis-application of the key provisions of the Ordinance to two recognized exchange companies ("RECs"), four recognized clearing houses ("RCHs") and one recognized exchange controller ("RXC") (i.e. Hong Kong Exchanges and Clearing Limited ("HKEx") and its subsidiaries) regulated under the Securities and Futures Ordinance ("SFO")(Cap. 571) on public interest ground because they played a key role in maintaining Hong Kong's position as an international financial centre. Notwithstanding the proposal, he considered it necessary to tighten the regulation and control of these bodies through SFO to ensure that their activities, especially those related to their own interests in the financial market, were properly monitored. He also suggested the Commission coordinating with HKEx to work out appropriate rules to ensure that these bodies would not abuse their dominant market power.

13. Deputy Secretary for Financial Services and the Treasury (Financial Services)1 ("DS(FS)1") responded that under SFO, before rules of these seven bodies could be implemented, they had to be approved by the Securities and Futures Commission ("SFC"), often after thorough consultation with market players and the public. To strengthen monitoring of the fulfillment of requirements concerning competition under SFO, SFC would continue its enhanced communication with the Commission.

14. Mr Christopher CHEUNG declared that he was a practitioner of the securities and futures industry. Given that HKEx and its subsidiaries were regulated by SFC and six of the board directors of HKEx were appointed by the Government, Mr CHEUNG considered that these seven bodies should have upheld the competition principle in their operation and hence it was unnecessary to disapply the Ordinance to them. In response, DS(FS)1 said that while these bodies were currently regulated by and adhering to the competition principle under SFO, making the regulation could avoid the situation that the activities of these bodies were regulated by SFO and the Ordinance at the same time which might result in legal uncertainty.

15. Mr Christopher CHEUNG considered that HKEx was a corporation highly concerned about gaining returns for shareholders, especially when there were requests for reviewing the fee levels. According to his observation, HKEx was purely a profit-making commercial corporation rather than acting in the interest of the public. He doubted how the Administration could ensure that HKEx and its subsidiaries would set the fees at reasonable levels. DS(FS)1 clarified that it was not the Administration's intention to exclude RECs, RCHs and RXC from the competition framework. In fact, one of the regulatory objectives of SFO was to maintain and promote, among other things, the competitiveness of the securities and futures industry with special attention to the stability of the financial system and the protection of the interest of members of the public.

16. In respect of the fees imposed by HKEx and its subsidiaries, DS(FS)1 stressed that SFO explicitly provided that such fees should be examined by SFC which would consider, among others, the competition factors in Hong Kong and overseas before giving its approval. She added that whenever there was a request for SFC's approval on imposing fee, SFC would request the REC, RCH or RXC concerned to provide a response and information on various questions including the competition situation in Hong Kong and overseas.

17. In reply to Mr Christopher CHEUNG's concern on the measures adopted to ensure that the small and medium securities firms could compete on equal footing, DS(FS)1 said that the Administration attached much importance to the competitiveness of these firms. It had regular meetings with the trade to understand the problems it encountered and give concrete responses. The Administration also encouraged HKEx and its related entities to enhance their communication with small and medium securities firms and respond to them appropriately in respect of the situations they encountered.

18. Mr SIN Chung-kai pointed out that in early 2000s when SFO was made and enacted, promotion of competition was not a key concern in the society. He considered that it was now necessary to review SFO to strengthen its competition principle and empower SFC to take appropriate actions under it. DS(FS)1 explained that the current SFO had an express objective relating to competition. For example, section 5 of SFO provided that the functions of SFC were, among other things, "to take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry". In addition, section 6(2)(c) stipulated that "the principle that competition among persons carrying on activities regulated by [SFC] under any of the relevant provisions should not be impeded unnecessarily". Furthermore, all RECs, RCHs and RXC were required by SFO to act in the interest of the public. In particular, they should, in discharging their duties,

ensure that the interest of the public prevailed where it conflicted with their interests as set out in sections 21(2), 38(2) and 63(2) of SFO. These provisions showed that SFO had been made in line with the competition principle.

19. Noting that the Hong Kong Monetary Authority ("HKMA") and SFC had signed a memorandum of understanding ("MOU") to set out their respective roles in regulating the sale process for securities and futures products offered by banks and non-bank intermediaries, Mr SIN Chung-kai enquired if the Commission and SFC would also sign a MOU with a view to authorizing SFC to enforce the Ordinance. PSCIT clarified that SFC did not have jurisdiction under the Ordinance and it regulated the competition aspect of RECs, RCHs and RXC under SFO. A MOU between SFC and the Commission for SFC to enforce the Ordinance therefore would not be necessary. The Administration therefore was proposing to disapply the key provisions of the Ordinance to these bodies so that they would continue to be under the regulation of SFC according to SFO.

20. Noting that the proposed dis-application was made on the basis of public interest, Mr Kenneth LEUNG enquired what considerations had been given on this matter. He also considered that the four RCHs were, in his opinion, in common with the remaining non-statutory bodies that would be regulated under the Ordinance. DS(FS)1 responded that the fundamental consideration taken into account about public interest was to maintain a stable and healthy financial market in which RECs and RCHs had a considerable impact. Secondly, consideration should also be given to the long term development of the financial market as well as the overall economy of Hong Kong. She added that the four RCHs were responsible for clearing and settlement of transactions in securities, futures contracts or over-the-counter derivatives which was an important infrastructure to the financial market particularly on risk management. In addition, the four RCHs in question were also required by SFO to act in the interest of the public. As such, the Administration considered it necessary to disapply the key provisions of the Ordinance to them.

21. Mr YIU Si-wing enquired if the Administration would give a similar treatment to non-financial undertakings on the grounds of public interest and that the undertakings were subject to stringent regulation under existing legislation. PSCIT explained that while the Ordinance empowered the Chief Executive in Council to disapply the key provisions to any person, the Administration should take extreme precaution to exercise this power. For this case, given the public interest ground as well as the fact that the seven non-statutory bodies concerned played important roles in developing and maintaining a safe and efficient financial infrastructure in Hong Kong, the Administration proposed to make such a dis-application.

22. In response to Mr YIU Si-wing's further query on whether the Administration would re-consider the matter if a non-statutory body applied for dis-application based on public interest ground, PSCIT stressed that the present proposal had been reviewed by all bureaux and it was concluded that only these seven non-statutory bodies were identified. While the Administration had no plan to make a similar regulation for other non-statutory bodies, it would consider the merits of any applications for dis-applications that might come in future.

*Regulation to be made on the determination of turnover of undertakings*

23. Mr CHAN Kam-lam said that Members belonging to DAB supported the proposed regulation to be made on the determination of turnover of undertakings. He considered capping the pecuniary penalties to turnover obtained in Hong Kong instead of globally could help protect the small enterprises from the heavy-handed approach when there were any cases of non-compliance.

24. Members noted that the First Conduct Rule did not apply to an agreement between undertakings if the combined turnover for the relevant turnover period did not exceed \$200 million; and the Second Conduct Rule did not apply to conduct of an undertaking the turnover of which did not exceed \$40 million for the relevant period. Mr Kenneth LEUNG enquired how these thresholds were determined and whether they would be reviewed regularly. PSCIT recalled that the thresholds of turnover, on which the Bills Committee on Competition Bill had discussed, were determined based on the statistics of average turnovers of small and medium sized enterprises ("SMEs") reported by the Census and Statistics Department ("C&SD"). He added that while the current thresholds had been stipulated in the principal Ordinance, the Administration had accepted the suggestion of the Bills Committee to review such thresholds from time to time having regard to updated statistics provided by C&SD.

25. In response to Mr TANG Ka-piu's enquiry on the ways to tackle the situation where an undertaking entered into an agreement through its shell companies or virtual companies with very low turnovers but the conduct of the undertaking breached the Ordinance, PSCIT said that in enforcing the Ordinance and carrying out investigation on a suspected illegal act in future, the Commission would consider the undertaking(s) (i.e. the parent company and/or its subsidiaries) actually involved in the acts based on the facts of each case. Similarly, when determining the penalty level of a convicted case, it might vary on a case-by-case basis depending on the involvement of the parent company and/or its subsidiaries in question. He stressed that the purpose of making the regulation on turnover was to clarify the methods on calculating the amount of turnover.

26. Mr TANG Ka-piu queried on whether the tips for tourist guides/tour escorts payable by tour participants, the level of which, as he understood, was set on a platform involving the Travel Industry Council of Hong Kong ("TICHK"), was an anti-competitive conduct under the Ordinance. PSCIT said that according to his knowledge, if the involving parties jointly set an agreeable level of tips, such practice would likely violate the provisions of the Ordinance. Mr TANG further enquired if a case was found convicted, whether the turnover of TICHK or travel agents, or the income of tourist guides/tour escorts, would be subject to assessment for penalty consideration under the Ordinance. In response, PSCIT explained that it would be difficult to make a judgment without more detailed information.

*Others*

27. Mr Christopher CHEUNG considered it unfair for the securities and futures industry to compete with the banking sector on transaction of securities and futures. Mr SIN Chung-kai relayed a similar concern of the industry. DS(FS)1 responded that banks conducting securities or futures intermediary activities should register as "registered institutions" under SFO. HKMA and SFC had also entered into a MOU to ensure, among other things, that all intermediaries carrying out regulated activities in Hong Kong were subject to consistent regulatory measures, irrespective of whether they were supervised by SFC or HKMA.

28. Mr Christopher CHEUNG also enquired whether it contravened a competition rule if the business engaged in a "cut-throat" competition by adopting a low-price strategy to drive away other competitors. In response, DS(FS)1 said that any actions such as "cut-throat" competition having an adverse impact on the financial soundness of a securities/futures entity and protection of customers would be a cause of concern for SFC. PSCIT added that general players of the financial market were regulated under the Ordinance.

Conclusion

29. The Chairman concluded that members generally supported the Administration's plan to introduce the three pieces of subsidiary legislation into LegCo. He invited the Administration to take note of members' views as appropriate. PSCIT advised that the Administration planned to table the three piece of subsidiary legislation at the meeting of LegCo in early 2015.

**V. Draft guidelines made under the Competition Ordinance**

- (LC Paper No. CB(4)166/14-15(05) - Competition Commission's paper on draft guidelines made under the Competition Ordinance
- LC Paper No. CB(4)166/14-15(06) - Paper on the draft guidelines made under the Competition Ordinance prepared by the Legislative Council Secretariat (background brief)

Presentation by the Competition Commission

30. Upon invitation, Hon Anna WU, Chairperson, Competition Commission briefed members on the recent work of the Commission, including the publication of and consultation on the guidelines ("the Guidelines") required by the Ordinance. She said that the Commission kicked off the first phase of the consultation, prior to publication of the Draft Guidelines, to exchange views with a large range of stakeholders, such as industry associations and chambers, in May 2014. On 9 October 2014, the Commission, together with the Office of the Communications Authority ("OFCA"), jointly published six draft Guidelines ("the Draft Guidelines") to commence the second phase of consultation. The Commission would revise and refine the Draft Guidelines for further consultation with LegCo and other appropriate persons in the first quarter of 2015.

31. Hon Anna WU of the Commission further advised that separately to the consultation on the Draft Guidelines, the Commission would continue to prepare and release policies (such as the Leniency Agreement Policy and Enforcement Policy) and publications (such as some easy to follow leaflets and booklets) for SMEs to assist them to get ready to comply with the Ordinance and get to know the enforcement priorities of the Commission. It would also prepare a MOU with OFCA which had concurrent jurisdiction with the Commission to enforce the Ordinance in respect of certain sectors.

Discussion

*Draft Guidelines on First Conduct Rule: competition policy versus labour policy*

32. Mr TANG Ka-piu opined that competition policy and labour policy were separate matters. He expressed worries that labour issues might fall within the ambit of the Ordinance such that the outcome of negotiations between labour

unions and trade associations on workers' remunerations, such as those of the construction industry, would be subject to regulation under the Ordinance.

33. The Chairman, Dr Fernando CHEUNG and Dr CHIANG Lai-wan also expressed a similar concern. Dr CHIANG considered that the competition policy and the labour policy should not contradict each other. The Chairman commented that, in theory, minimum wages and collective bargaining could be regarded as activities distorting competition. Dr CHEUNG however held the view that minimum wages and collective bargaining could help balance the unequal status between employees and employers, and they should be viewed as labour protection rather than anti-competitive conduct.

34. In response, Hon Anna WU of the Commission advised that whether an activity would be subject to regulation under the Ordinance would depend on three factors, viz. (a) whether the parties to the activity were undertakings, (b) whether the activity in question was an economic or commercial activity, and (c) the policy scope of the activity. For labour issues under discussion, she said that employees and labour unions in general were not undertakings and did not involve themselves in economic or commercial activities. She considered that negotiations or bargaining on workers' remunerations by and large fell under the purview of labour policy. As such, the Commission would not deal with labour issues or accord very low priority in handling related matters. She said that if necessary, the Commission would elaborate its views on the relationship between labour issues and the Ordinance in writing.

35. Mr Timothy David LEAR, Executive Director (Operations), Competition Commission advised that competition policy focused on the behaviour of enterprises competing for customers rather than on labour issues and industrial relations matters. While there were specific exemptions of labour-related bodies from the application of competition laws in other jurisdictions, there was no such arrangement at present in Hong Kong. Normally, employees and unions were not regarded as undertakings. The Commission would consider issuing additional guidance in this respect.

36. Noting that the Commission would not prioritize labour issues in its enforcement and there were exemptions for labour matters from competition law in other jurisdictions, Mr TANG Ka-piu asked the details of the exemption arrangement overseas and if relevant overseas case law could be referenced in the Guidelines. In reply, Hon Anna WU of the Commission advised that exemption practices varied across jurisdictions with certain countries having a specific exemption for labour-related matters from the application of their competition law while some others did not. When considering the application of the Ordinance, the Commission would adhere to the three key factors mentioned

above as well as consider the economic impact of the relevant arrangements and the public interest. She advised that relevant case law could be incorporated into the Guidelines.

*Draft Guidelines on the First Conduct Rule: price fixing*

37. Mr TANG Ka-piu noted that service charges, commonly known as "tips", were the main source of income for tour escorts and tourist guides, however, the service charge standards were set by TICHK. When the Ordinance entered into force, Mr TANG enquired whether this practice would be prohibited. He also asked whether the tour escorts and tourist guides who were self-employed would be regarded as undertakings under the Ordinance. Mr Timothy David LEAR of the Commission advised that the Commission would be in dialogue with TICHK to look into the present arrangements with respect to "tips" and the employment status of tour escorts and tourist guides before deciding whether the practices might contravene the Ordinance.

38. Dr CHIANG Lai-wan relayed the concerns of the accounting industry and asked whether it was an offence under the Ordinance for an accountant association to set out fee schedules for members' reference, and prohibiting resigned partners of an accounting firm from joining another accounting firm for a certain period of time.

39. For fee scales set by professional bodies, Hon Anna WU of the Commission advised that if it was a concerted effort and had a binding effect in nature, it would probably be viewed as price fixing contravening the First Conduct Rule. The Commission noted the concern of various trade associations and professional bodies, and would illustrate more hypothetical examples to assist businesses to understand this part of the Ordinance.

40. The Deputy Chairman noted that the goldsmith shops in Hong Kong followed the daily gold prices released by gold business associations. This practice had been carried out for decades so as to ensure fair competition between small-sized goldsmith shops and large scale goldsmith chain stores. If this practice were considered price fixing and had to be repealed, he was very concerned that small-sized goldsmith shops would face intensifying competition and might be priced out readily by large scale goldsmith chain stores in the market. Hon Anna WU of the Commission advised that during her service in the Consumer Council, she had helped resolve a similar problem faced by the banking industry and finally banks agreed not to set an interest rate across the board for fixed deposits. The Commission would draw experience from this case and be in touch with the gold businesses to ease their concern in this aspect.

41. Mr CHAN Kin-por enquired whether the practices of information exchange in the insurance industry would contravene the Ordinance. Statistics of claims from individual insurance companies were collected and distributed across the industry with a view to estimating relevant product cost. While the information exchanged did not extend to premium pricing, he asked whether it might nonetheless raise issues under the Ordinance. Mr Philip Francis MONAGHAN, Executive Director (General Counsel), Competition Commission advised that he could not comment in detail on specific cases but he noted that the exchange of information of the type described was common practice in the insurance sector and that competition laws around the world were able to accommodate information exchanges of this kind. Moreover the Commission would expect to take a similar view under the Ordinance. In this context, it was also clearly important that parties did not exchange information on premiums but merely information of a statistical nature. Mr CHAN commented that, given the commercial sector still had a lot of doubts about the Ordinance; the Commission should clearly set out the do's and don'ts and clarify the grey areas before full implementation of the Ordinance. Hon Anna WU of the Commission took note of Mr CHAN's comments.

42. Mr SIN Chung-kai noted that the Commission had been conducting consultation and internal preparation to get ready for the full implementation of the Ordinance. Noting that the Draft Guidelines would be finalized before the Ordinance came into effect on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette, he urged the Commission to rationalize all the issues and concerns relating to the Draft Guidelines before finalizing them. Otherwise, stakeholders and the general public might swamp the LegCo subcommittee formed to scrutinize the relevant Commencement Notice. In response, Hon Anna WU of the Commission stressed that the Commission would step up its effort in publicity and education to assist the multi-national corporations ("MNCs") and SMEs in risk assessment and in compliance with the Ordinance. The Commission would also collaborate with the Administration at the policy level, for example, to ensure the statutory organizations adhered to the Ordinance.

#### *Draft Guidelines on Complaints*

43. Mr Dennis KWOK relayed questions from the legal profession. Given the broad discretion of the Commission in respect of handling complaints, he asked the Commission to provide more details on the types of complaints that it would or would not investigate. For the interest of the public, he opined that the Commission should set out the criteria on complaints that would be handled and investigated.

44. Mr Philip Francis MONAGHAN and Mr Timothy David LEAR of the Commission advised that the criteria for deciding whether to pursue a complaint or not were set out in the Draft Guidelines, and the upcoming Enforcement Policy would elaborate the Commission's enforcement priorities. As the consultation was still underway, the Commission would later on revise and supplement the relevant parts of the Draft Guidelines if necessary. Hon Anna WU of the Commission added that the Commission would accord higher priority to dealing with complaints relating to matters of wide public interest and major policy issues in competition.

45. The Deputy Chairman noted that the Commission would accept complaints directly, anonymously and through an intermediary. He expressed concern about anonymous complaints as they could easily be abused as a tool to attack competitors although the Commission could exercise discretion not to accept and follow up on them. He enquired whether there would be an appeal mechanism if businesses disagreed with the Commission's decision to deal or not to deal with a given complaint. Hon Anna WU of the Commission advised that the Ordinance permitted the Commission to accept anonymous complaints. To prevent abuse of the complaint mechanism, upon receiving of an anonymous complaint, the Commission would carry out initial assessment and obtain further evidence of the case before deciding whether to proceed to formal investigation. As regards the possibility of appeal against a Commission decision to take action or not in respect of a given complaint, the Commission would consider whether it might be appropriate to establish an internal procedure or subcommittee of some kind for the purpose of reviewing decisions that particular complaints did not warrant further investigation.

46. Dr CHIANG Lai-wan opined that many SMEs did not fully understand the Ordinance and the public were generally not aware of their rights in lodging complaints to the Commission. She urged the Commission to introduce the Guidelines to the public in a simple and straight-forward manner through enhanced publicity programmes. In reply, Hon Anna WU of the Commission advised that the Commission had endeavoured to make the Guidelines easy to follow. The Commission had produced publicity materials and video clips to promote the Ordinance which were uploaded to the Commission's website for access of the public.

*Other issues*

47. Mr Dennis KWOK noted that MNCs were already familiar with dealing competition regimes around the world and international best practice could serve as a bridge connecting Hong Kong and other jurisdictions. He asked whether

the Guidelines would adhere to international best practice. Mr Philip Francis MONAGHAN of the Commission advised that the Commission had endeavoured to follow international best practice as a matter of course. For businesses trading internationally, they would find that the approach of the Commission was consistent with other countries' competition law regimes. Ms Rose WEBB, Senior Executive Director, Competition Commission advised that the Commission was a member of the International Competition Network ("ICN"). ICN was an international body whose members were competition authorities worldwide. The Commission would liaise closely with the working groups of the ICN to ensure practices in Hong Kong harmonized with those of other jurisdictions around the globe.

48. The Chairman commented that the Guidelines would not be part of the law and would not bind the Competition Tribunal ("the Tribunal"). He expressed concern about the possibility that the Tribunal might not concur with the Commission's Guidelines when interpreting the Ordinance. Hon Anna WU of the Commission replied that the cross-sector Guidelines were generic in nature and could be supplemented by more illustrative examples for in-depth elaboration. For sector-specific issues, the Commission could further elaborate its views or specific issues in writing, e.g. in question-and-answer format. As the Draft Guidelines reflected only the Commission's position in the interpretation of the law, the Tribunal had the power to decide differently. The Commission had benchmarked the Draft Guidelines against relevant international standards of competition policy in other jurisdictions. As such, the Draft Guidelines tended to build on consensus rather than differences in interpreting the Ordinance. Last but not least, the Commission itself would take full responsibility for the future Guidelines and conduct itself in a manner consistent with the Guidelines.

### Conclusion

49. In conclusion, the Chairman invited the Commission to take note of the views and concerns expressed by Panel members at the meeting and revise the Draft Guidelines for further consultation with the Panel in due course.

### **VI. Any other business**

50. There being no other business, the meeting ended at 12:26 pm.