

立法會
Legislative Council

LC Paper No. CB(4)1153/14-15

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Panel on Economic Development

Minutes of meeting
held on Monday, 27 April 2015, at 11:00 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 Ronny TONG Ka-wah, SC
Dr Hon LAM Tai-fai, SBS, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon LEUNG Ka-lau
Hon Paul TSE Wai-chun, JP
Hon Albert CHAN Wai-yip
Hon Steven HO Chun-yin
Hon Frankie YICK Chi-ming
Hon YIU Si-wing
Hon Charles Peter MOK, JP
Hon Kenneth LEUNG
Hon Dennis KWOK
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
Hon TANG Ka-piu, JP
Dr Hon CHIANG Lai-wan, JP
- Member present** : Hon WONG Kwok-hing, BBS, MH
- Members absent** : Hon WONG Ting-kwong, SBS, JP
Hon James TIEN Pei-chun, GBS, JP

Hon CHAN Han-pan, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Elizabeth QUAT, JP

**Public Officers
attending**

: Agenda item IV

Mr Sanda CHEUK
Assistant Director (Market and Competition)
Office of the Communications Authority

Ms Elaine HUI
Head, Market and Competition 1
Office of the Communications Authority

Agenda item V

Ms Christine LOH, JP
Under Secretary for the Environment

Mr Vincent LIU, JP
Deputy Secretary for the Environment

Mr Martin MA
Senior Treasury Accountant (Financial Monitoring)1
Environment Bureau

**Attendance by
invitation**

: Agenda item IV

Competition Commission

Hon Anna WU, GBS, JP
Chairperson

Mr Thomas CHENG
Member

Dr Anthony William SEETO
Member

Dr Stanley WONG
Chief Executive Officer

Ms Rose WEBB
Senior Executive Director

Mr Rasul BUTT
Executive Director (Corporate Services and Public
Affairs)

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

Ms Zoe TONG
Legislative Assistant (4)5

Action **I. Confirmation of minutes of meeting**

(LC Paper No. CB(4)818/14-15 - Minutes of meeting held on
16 February 2015)

The minutes of the meeting held on 16 February 2015 were confirmed.

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

(LC Paper No. CB(4)727/14-15(01) - Administration's paper on public
consultation on the future
development of the electricity
market

LC Paper No. CB(4)741/14-15(01) - Administration's paper on tables
and graphs showing the import
and retail prices of major oil
products from March 2013 to
February 2015

- LC Paper No. CB(4)801/14-15(01) - Submission from Greenpeace on the future development of the electricity market (Chinese version only)
- LC Paper No. CB(4)801/14-15(02) - Letter from Dr Hon Fernando CHEUNG on the future development of the electricity market (Chinese version only)
- LC Paper No. CB(4)801/14-15(03) - Joint letter from Dr Hon Kenneth CHAN and Hon Dennis KWOK on the future development of the electricity market (Chinese version only))

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)822/14-15(01) - List of outstanding items for discussion

LC Paper No. CB(4)822/14-15(02) - List of follow-up actions)

3. Members agreed to discuss the following items at the next regular meeting scheduled for Wednesday, 27 May 2015 –

- (a) Future development of the electricity market in Hong Kong;
- (b) Update on follow-up actions arising from the Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012; and
- (c) Proposed creation of a supernumerary directorate post for supporting the development of the maritime industry.

4. In response to Dr Fernando CHEUNG, Dr Kenneth CHAN and Mr Dennis KWOK's request, the Chairman directed and members agreed that a special meeting would be scheduled for 16 June 2015 to receive views of deputations on the "Public consultation on the future development of the electricity market in Hong Kong".

(Post-meeting note: The special meeting on 16 June 2015 was subsequently re-scheduled to be held on 6 June 2015 and notice of meeting was issued to members vide LC Paper No. CB(4)997/14-15 on 14 May 2015.)

IV. Guidelines and document prepared by the Competition Commission as required under the Competition Ordinance

(LC Paper No. CB(4)822/14-15(03) - Competition Commission's paper on guidelines and other documents prepared by the Competition Commission as required under the Competition Ordinance

LC Paper No. CB(4)822/14-15(04) - Paper on the draft guidelines made under the Competition Ordinance prepared by the Legislative Council Secretariat (background brief)

Presentation by the Competition Commission

5. At the invitation of the Chairman, Hon Anna WU, Chairperson of the Competition Commission ("the Commission") briefed members on the recent work of the Commission, including the preparation of the guidelines ("the Guidelines") required by the Competition Ordinance (Cap. 619) ("the Ordinance"), preparation and release of policies, publications and self-assessment tools, and internal preparation including finalizing staff recruitment and establishing operational policies and processes. The Commission aimed to complete all its preparation work by mid-2015 and hoped for the commencement notice of the Ordinance ("the Notice") being tabled at the Legislative Council ("LegCo") by end of June 2015 and the Ordinance coming into full operation as soon as possible by 1 December 2015. During the interim period ("the notice period"), the business sector could use the time to adjust their operations to bring them into line with the Ordinance. According to overseas experience, anti-competitive conduct had brought about a 10% increase in the prices of goods/services concerned. So far, the Commission had received some 100 complaints/cases of concern and about 400 enquiries on competition-related matters such as in the area of building maintenance. The Commission had

commenced preliminary study regarding some of these matters and after commencement of the Ordinance, the Commission would take appropriate action upon receiving complaints.

6. Dr Stanley WONG, Chief Executive Officer of the Commission and Mr Rasul BUTT, Executive Director (Corporate Services and Public Affairs) of the Commission also briefed members further on (a) the publication and consultation of the draft guidelines and revised draft guidelines ("the Revised Draft Guidelines"); (b) the preparation for a Memorandum of Understanding ("MOU") to be signed between the Commission and the Communications Authority ("CA") for the purpose of coordinating the performance of their functions under the Ordinance concurrently; (c) the proposed fees payable for the making of an application to the Commission under the Ordinance; and (d) education and assistance activities provided/to be provided by the Commission, with the details set out in its paper (LC Paper No. CB(4)822/14-15(03)).

Discussion

First Conduct Rule

Price-fixing

7. Mr TANG Ka-piu was disappointed that the Environment Bureau failed in enhancing competition in the auto-fuel market. He drew members' attention to the Auto Fuel Calculator maintained by the Consumer Council which showed that the recent diesel prices charged by all five oil companies were unanimously set at the same level of \$9.12 per litre irrespective of the location of the petrol filling stations ("PFSs"). He doubted whether the oil companies were engaging in price-fixing activities. Both the Chairman and Mr Albert CHAN shared a similar concern.

8. Dr Stanley WONG of the Commission pointed out that like many other places worldwide, Hong Kong was very concerned about auto-fuel prices. He noted that PFSs locating close to each other might set the auto-fuel prices at the same level to avoid being priced out in the competition, given there was no much difference in the quality of the auto-fuel. Nevertheless, he undertook that the Commission would look into relevant issues relating to the auto-fuel market to see if any anti-competitive conduct was involved.

9. Mr TANG Ka-piu did not subscribe to the explanation of Dr WONG. The Deputy Chairman echoed Mr TANG's concern and urged the Commission to investigate into possible price-fixing activities in the auto-fuel market as soon as the Ordinance came into full operation.

10. Hon Anna WU of the Commission advised that, according to her understanding, competition authorities worldwide had studied the auto-fuel market with follow up actions taken in some cases. She said that the Commission had just initiated a preliminary study on the local auto fuel market which, among other things, could touch on the adequacy of information disclosure by the oil companies and the feasibility of setting up a committee on auto-fuel prices.

11. Dr Fernando CHEUNG was very surprised at Dr WONG's explanation which deviated from his real-life experience. He noted that in the United States ("the US"), auto-fuel prices in PFSs on the same street were always different, and people chose the brands instead of comparing prices. This deviated from Dr WONG's observation that it was natural for PFSs locating near each other to set the auto-fuel prices at the same level. He was worried that the Commission would take this perspective in studying the market, instead of tackling possible price-fixing in the auto-fuel market which new players might find it difficult to enter.

12. Dr Stanley WONG of the Commission clarified his point that in Hong Kong, PFSs locating next to each other would usually set the same auto-fuel price as otherwise the one setting a higher price might get no business. He explained that overseas cases might involve other factors that the Commission would understand more once the study was undertaken. In respect of the auto-fuel market study, the Commission could not compel information from the oil companies. However, if an investigation was commenced, it might, under section 41 of the Ordinance, obtain documents or specified information from them if it had reasonable cause to believe that the information could assist the Commission in the investigation.

Vertical agreements

13. The Chairman pointed out that in Singapore, vertical agreements were excluded from the equivalent of the First Conduct Rule and that there was a block exemption for such agreements in the European Union ("the EU"). Noting that there were some submissions in the last consultation highlighting that an exemption for vertical agreements under the Ordinance was necessary to give more certainty for businesses in Hong Kong, he enquired the rationale for not adopting such approach.

14. Dr Stanley WONG of the Commission stressed that vertical agreements were not exempt under the Ordinance as enacted by LegCo, and thus the Commission was now working on the guidelines giving sufficient flexibility in

this area. He added that certain types of vertical agreements were inherently anti-competitive, such as resale price maintenance ("RPM") arrangements where indirect price-fixing activities might take place. He drew members' attention to the Commission's responsibility to look at the specifics of Hong Kong where the full implementation of the Ordinance was yet to start, while the EU had already had decades of implementation and enforcement of the law concerning vertical agreements. In addition, the Commission did not have any guidance from the Competition Tribunal ("the Tribunal") on this matter yet whereas the European Commission itself was responsible for investigations, making findings and imposing punishments.

Resale price maintenance arrangements

15. Mr Dennis KWOK asked about the Commission's view in respect of RPM arrangements under the First Conduct Rule as raised by The American Chamber of Commerce in Hong Kong in its submission (LC Paper No. CB(4)878/14-15(01)).

16. In response, Dr Stanley WONG of the Commission advised that according to the Ordinance, any agreement to fix, maintain, increase or control the price for the supply of goods or services was serious anti-competitive conduct. The Commission might consider RPM agreements having the object of harming competition or enhancing overall economic efficiency depending on the circumstances. For example, if retailers induced suppliers through a RPM agreement to impose the same price on its goods or services, the agreement might be considered as an indirect cartel arrangement and having the object of harming competition. In other cases, for example, where franchisors adopted measures for maintaining the identity and reputation of a franchise network, including coordinating price campaign of limited duration, the Commission might consider such RPM not giving rise to concerns under the First Conduct Rule on the basis of its effects.

Recommended prices and self-employed persons

17. Mr WONG Kwok-hing welcomed the Commission's clarification that employees were not considered to be undertakings. Mr TANG Ka-piu appreciated the advice of the Commission that collective negotiation activities engaged by employees with their employers on matters such as salaries and conditions of work were outside the scope of the first conduct rule. However, Mr TANG was concerned whether self-employed persons or persons who had an unclear employment relationship, such as tourist guides/tour escorts, were subject to the First Conduct Rule. He elaborated that the Travel Industry Council of Hong Kong had abolished the guideline on the proposed level of service charge

imposed on tour participants. For tourist guides/tour escorts who might discuss their salaries with their companies, he enquired whether such collective negotiation activities were subject to the First Conduct Rule.

18. Dr Stanley WONG of the Commission advised that self-employed persons were usually considered as separate undertakings under the Ordinance, but there were cases that self-employed persons were *de facto* employee hired by an undertaking which would be regarded as normal employer-employee relationship for the purpose of the Ordinance.

Exclusivity

19. The Chairman relayed a comment that the Ordinance was drafted in a way much stricter than the competition law in the US and the EU. For example, exclusivity would be presumed anti-competitive in some circumstances where businesses had market power, without even looking at the effect of the exclusive dealing. He considered that there might be good commercial reasons for businesses agreeing exclusivity provisions in their agreements in some cases, and other jurisdictions looked very closely at whether the practice was an abuse of market power before they might prohibit it.

20. Hon Anna WU of the Commission considered that the Ordinance was not stricter than the relevant law in the US and the EU, especially in terms of penalty. In addition, the European Commission was empowered to carry out investigations as well as to impose penalty on proven cases.

21. Dr Stanley WONG of the Commission assured members that most agreements between undertakings were unlikely to be anti-competitive and would not raise concerns. The Commission was required to demonstrate that an agreement had either an anti-competitive object or an anti-competitive effect. There were therefore two alternative ways of showing that the agreement harmed competition. Where an agreement had an anti-competitive object, it was not necessary for the Commission to also demonstrate that the agreement had an anti-competitive effect.

Block Exemption Order

22. Mr Frankie YICK relayed the concern of the shipping industry on whether Hong Kong would follow the international practice on providing a block exemption under the Ordinance, i.e. a Block Exemption Order ("BEO") under section 15, for cooperative agreements, including vessel sharing agreements ("VSAs") and voluntary discussion agreements ("VDAs"), made among shipping liners. In view of the lead time required for the deployment of ocean-going

vessels ("OGVs"), the industry had raised the relevant matter to the Commission more than a year ago. He urged the Commission to advise as early as possible whether VSAs and VDAs were subject to the Ordinance, and if yes, whether BEO would be given or issued upon application.

23. Dr Stanley WONG of the Commission responded that the Commission noted the concerns and requests of various industries, including shipping liners, on block exemptions. However, the Commission could consider an application for BEO only after the Ordinance became fully operational. If the Commission proceeded to consider the application, it would publish the application, review representations made by other parties, publish notice of proposed BEO for further consultation and consider further market inquiries before issuing the BEO the process of which would take quite some time. Nevertheless, the Commission had informed shipping liners that it would reconsider the matter in mid July.

24. Mr Frankie YICK was disappointed about Dr WONG's response and stressed that the uncertainty on this matter would drive shipping liners to deploy OGVs away from Hong Kong to use neighbouring ports which would cause a significant impact on the local economy and many people's livelihood.

25. Hon Anna WU of the Commission responded that the Commission would continue to communicate with different industries to understand their needs and concerns. She welcomed further opportunities to meet with the shipping industry to discuss related issues.

Second Conduct Rule: market power

26. Mr Dennis KWOK relayed the concern of the legal profession about the assessment of substantial market power and that the Commission did not include any market share percentage for this purpose. Dr Stanley WONG of the Commission replied that market share alone was not a sufficient indication of existence of substantial market power or otherwise, in particular when the market size was as small as Hong Kong. Factors such as ease of entry and expansion, availability of supply-side substitution and buyer power had the capacity to prevent a firm with a high market share from having a substantial degree of market power. It was necessary for the Commission to study the market structures in Hong Kong along with having enforcement experience before it could decide whether a market share percentage should be introduced for measuring market power.

27. Mr WONG Kwok-hing expressed concern about the high rentals of carpark and shopping centres managed by The Link REIT ("the Link"). He considered that the supply of carpark in public housing estates was being

monopolized by the Link which jeopardized the interest of the public. He was also worried that the Link had outsourced the management of its shopping malls to other operators which had in turn imposed high rentals and miscellaneous charges on the small shops in the malls. Hon Anna WU of the Commission remarked that the practice of the Link was concerned with complicated matters related to consumer rights, fair trade and competition practices and government's policy on land management. She indicated that the Commission could consider looking into these concerns in future.

Merger Rule

28. Mr Kenneth LEUNG enquired whether parties to merger were required under the Ordinance to obtain pre-clearance from the Commission. Assistant Director (Market and Competition) of the Office of the Communications Authority ("AD(M&C)") advised that the Merger Rule under the Ordinance only applied to a merger involving an undertaking that directly or indirectly held a "carrier licence" within the meaning of the Telecommunications Ordinance (Cap. 106). He pointed out that the carrier licensee concerned and related parties were not required to notify CA or the Commission, or to seek their approvals before any merger and acquisition took place.

Application of the Ordinance

29. Mr Albert CHAN expressed his wish that the Ordinance would curb anti-competitive activities that had been practiced in Hong Kong. Noting that the High Court had quashed the Government's decision of rejecting the Hong Kong Television Network Limited ("HKTV") for a domestic free television ("FTV") programme service licence in a judicial review, Mr CHAN expressed concern whether the Government's decision allowing free television service being monopolized was anti-competitive and should be subject to regulation of the Ordinance. He urged the Commission to look into the matter.

30. AD(M&C) advised that CA had been tackling anti-competitive conduct in the relevant sectors according to the competition provisions in the Telecommunications Ordinance (Cap. 106) and the Broadcasting Ordinance (Cap. 562). Upon full implementation of the Ordinance, the aforesaid provisions would be repealed and CA would perform its function under the Ordinance and take the lead role in dealing with competition matters in the telecommunications and broadcasting industries.

31. Hon Anna WU of the Commission added that while Government actions were not subject to the Ordinance, the Commission and CA could reflect their views about market competition affected by Government actions. According to

her understanding, the court case on HKTV related to the decision of the Chief Executive in Council, with the court ruling it as a departure from a stated policy. In this regard, the case was not on the absence of a competition policy and did not involve CA's decision. .

32. Mr Ronny TONG pointed out that many overseas government bodies, albeit exempted from competition law, would make declarations of their determination to enhance competition. However, he was not aware that the Administration had taken the same stance in upholding and acting in accordance with competition principles. Hon Anna WU of the Commission indicated that the Commission would maintain a firm stance on enhancing competition and would advise the Administration appropriately on its views. The Commission would certainly provide views on relevant matters, such as consultations conducted by the Administration, in an open manner, and also advise the Administration on the need to act according to competition principles.

33. Noting that most of the statutory bodies, such as the Hong Kong Trade Development Council which also carried out economic activities, were exempt under the Ordinance, Mr Kenneth LEUNG enquired whether a review would be conducted in future to bring them or their activities under the Ordinance.

34. Hon Anna WU of the Commission pointed out that the Administration had undertaken to review the list of exempted statutory bodies in future, and the Commission would give views to the Administration on this matter if necessary. Ms Rose WEBB, Senior Executive Director of the Commission supplemented that other undertakings engaging in anti-competitive conduct with the exempt statutory bodies would still be subject to the regulation of the Ordinance. In addition, the Ordinance also empowered the Commission to investigate the activities of statutory bodies although it could not take action against them.

Education and assistance activities of the Commission

35. Dr Fernando CHEUNG hoped that the Ordinance could fully implement as early as possible to combat anti-competitive conduct, in particular that of "big players", such as property developers, supermarkets and oil companies. He expressed concerns whether the public could fully understand the Guidelines given their technical nature, and hence he requested the Commission to step up its publicity on them as well as deploy more manpower resources to receive complaints and answer enquiries. Hon Anna WU of the Commission took note of Dr CHEUNG's view and suggestion for consideration.

36. The Deputy Chairman expressed concern that small and medium enterprises ("SMEs") might have difficulties in understanding the Guidelines

while many of their conventional practices, which might tantamount to price-fixing, should be abolished. Mr CHAN Kam-lam expressed a similar view of Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong. Mr CHAN added that some industries might have already established some conventional charges, such as the service charge imposed in the travel and catering sectors. He urged the Commission to understand the industries' norms and practices, and step up its communication and promotions with various industries to explain what "practices" should be eliminated.

37. Dr Stanley WONG of the Commission responded that having regard to the technical nature of the Guidelines, the Commission had supplemented them with brochures and releases containing simple do's and don'ts for dissemination among SMEs through trade associations. It had also engaged SMEs and their associations/chambers about the Guidelines' application. Hon Anna WU of the Commission added that the Commission would focus future publicity work on SMEs and issue easy-to-understand brochures to apprise them of their rights and obligations under the Ordinance.

38. The Deputy Chairman expressed concern about the possibility that the Tribunal might not concur with the Guidelines on interpreting the Ordinance. He was worried that SMEs following the Guidelines might be found by the Tribunal to be contravening the Ordinance.

39. In response, Dr Stanley WONG of the Commission assured that such situation would probably never happen as the Commission was the only one to take an undertaking to the Tribunal. He added that in cases that the Tribunal disagreed with the Guidelines' interpretation of the Ordinances, the Commission would consider and revise the Guidelines as appropriate.

Next Steps

40. Mr Kenneth LEUNG enquired if the Commission would propose any advance rulings on matters covered by the Ordinance. Dr Stanley WONG of the Commission advised that the Ordinance did not provide formal procedures for the issue of advance rulings. Nevertheless, the Commission had engaged many stakeholders concerning the application of the Ordinance, through which they understood that their business practices should be adjusted in accordance with the Ordinance. This engagement process was expected to continue in the early period after the full implementation of the Ordinance.

41. Mr CHAN Kam-lam opined that businesses were pressing ahead to adjust themselves in accordance with the Ordinance and cautioned the Commission to

avoid taking a high-hand approach on enforcement. Hon Anna WU of the Commission advised that different enforcement actions would be applied to minor and serious anti-competitive acts. In specific circumstances, the Ordinance required the issue of warning notices, for example. In reply to Mr CHAN's further concern, Hon WU emphasized that the Guidelines would bind the Commission's practices in handling complaints and investigations.

42. In reply to the Chairman, Hon Anna WU of the Commission stressed that the Tribunal would make its judgment on each case independently. If the Tribunal ruled in favour of the undertaking brought before it, the Commission had to bear the legal costs so incurred. Any undertaking could also apply for judicial review of the Commission's determination as prescribed by the Ordinance.

43. Mr Ronny TONG noted that there were now three bodies, namely, the Commission, CA and the Competition Policy Advisory Group ("COMPAG"), responsible for implementation of competition policy in Hong Kong. He expressed concern on the effectiveness of COMPAG's work on enabling the Government itself in taking forward competition policy. He also considered that CA did not put adequate effort in promoting competition in the broadcasting sector, and the lack of competition had led to the recent failure of Asia Television Limited in renewing its domestic FTV programme service licence. As such, he enquired about the measures to be adopted to enhance the work of the three bodies so that they could implement competition policy within their purview based on the same standard.

44. Hon Anna WU of the Commission advised that the Commission and CA would enter into MOU for the purpose of coordinating the performance of their functions under the Ordinance. The MOU would help the two authorities deal with matters that were subject to concurrent jurisdiction and to facilitate the efficient and effective handling of such matters while avoiding duplication where possible. The Commission was also responsible for advising Government on competition matters to facilitate policy formulation. COMPAG, as an advisory body for the Government, would continue to play its role and she hoped that its role in policy making would be further refined .

45. Mr YIU Si-wing pointed out that the travel industry was reviewing their practices and seeking legal advice about whether some charges they used to impose were regarded as price-fixing under the Ordinance. As such, he enquired whether the Commission would not enforce against the collection of such charges during the review which might fall within or after the notice period. Hon Anna WU of the Commission advised that no action could be taken under the Ordinance until after full commencement of the Ordinance. During the

notice period, the Commission might answer enquiries from different industries and provide advice to enhance compliance. It would help industry and commerce to adjust if the notice period could be made a little longer. Hon WU remarked that after the commencement date, it would be the duty of the Commission to take enforcement actions against any anti-competitive conducts.

V. Prices of auto-fuel and domestic liquefied petroleum gas

- (LC Paper No. CB(4)822/14-15(05) - Administration's paper on auto-fuels retail prices and domestic liquefied petroleum gas prices
- LC Paper No. CB(4)822/14-15(06) - Letter from Hon TANG Ka-piu dated 30 March 2015 on price setting and adjustment of domestic liquefied petroleum gas (Chinese version only)
- LC Paper No. CB(4)822/14-15(07) - Administration's letter dated 20 April 2015 in response to the letter from Hon TANG Ka-piu on price setting and adjustment of domestic liquefied petroleum gas
- LC Paper No. CB(4)822/14-15(08) - Paper on prices of auto-fuel and domestic liquefied petroleum gas prepared by the Legislative Council Secretariat (background brief)

Presentation by the Administration

46. At the invitation of the Chairman, Under Secretary for the Environment ("USEN") remarked that the Administration noticed members' concerns about the monitoring of auto-fuel and domestic liquefied petroleum gas ("LPG") prices and their respective pricing mechanisms in Hong Kong. With the aid of powerpoint presentation, Deputy Secretary for the Environment ("DSEN") briefed members on the recent trend movements of auto-fuel and LPG prices and the monitoring work of the Administration.

(Post meeting note: The powerpoint presentation material provided by the Administration was issued to members vide LC Paper No. CB(4)875/14-15(05) on 27 April 2015.)

Discussion

Monitoring of auto-fuel prices

47. Members expressed grave concerns that despite the recent substantial reduction in international crude oil prices, the local retail auto-fuel prices (or commonly known as "the pump prices" which were the retail prices after tax and before cash discount) had only fallen slightly. Citing the recent price monitoring analysis conducted by the Consumer Council ("CC"), members were of the view that there were possible signs of "quick going up, slow coming down" in the pump prices.

48. The Administration advised that, it was of the view that the adjustments of pump prices were generally in line with the trend movements of international oil prices and import prices of refined oil products. In response to changes in Singapore free-on-board ("FOB") prices in 2014, there were occasions that the pump prices in Hong Kong were reduced twice within three days; while increments were implemented with a longer time gap of about a week. In addition, the Government did not come to the conclusion of the CC's study which analyzed the international crude oil prices rather than the Singapore FOB prices when comparing with the pump prices.

Admin 49. Members did not subscribe to the Administration's explanation. The Administration undertook to provide the relevant figures showing the corresponding adjustments of the international oil prices and the pump prices and time gaps between them for the past three years for members' reference.

(Post-meeting note: the requested information provided by the Administration was issued to members vide LC Paper No. CB(4)1023/14-15 on 22 May 2015)

50. Noting that the timing and magnitude of changes between the international oil prices and the pump prices showed signs of "more going up, less coming down", Mr Albert CHAN considered that the oil companies likely colluded among themselves and engaged in price fixing but the existing way of monitoring auto-fuel prices was in favour of them. Mr TANG Ka-piu also expressed a similar view and said that the recent diesel prices among all five oil companies were unanimously set at \$9.12 per liter without any variation at all. However, a major part of the operating cost was the land cost and the average

Government rent of the petrol filling station ("PFS") sites in 2005 to 2014 ranged from \$18,108 to \$742,800, which surprisingly did not have any influence on the pump prices.

51. In response, USEN stressed that the Administration had no intention to enable the oil companies to make more profit. DSEN reiterated that having regard to various discounts and promotions which usually varied between \$1 and \$2 per liter, the actual selling prices of auto-fuel were lower than the pump prices, for instance, a fleet of vehicles usually could enjoy a better discount than an individual vehicle. DSEN added that the difference in premiums of PFS sites was due to difference in sizes and locations of the PFS sites. Noting the Administration's response, Mr TANG Kai-pui pointed out that the unanimous diesel price of \$9.12 per liter was already a discounted price. Mr LEE Cheuk-yan considered that "discount" was an excuse to explain away the oil companies' failure in adjusting the pump prices in tandem with the movements of the international oil prices.

52. In the light of the Administration's response, Mr Frankie YICK opined that it was unfair for a fleet of vehicles enjoying a much higher discount on the pump prices than a singular vehicle. He also considered that the Administration double-charged the oil products with both PFS premiums and the Government duty. Provided with the huge variation on premiums of PFS sites, consumers in suburb area might have been subsidizing their counterparts in the urban area as land costs in rural area were lower but the pump prices were the same. In response, DSEN noted that Members had different views as to whether it was appropriate for oil companies to provide same discount for all vehicles. Mr YICK said that he would file a complaint with the Competition Commission ("the Commission") to request for an investigation on the anti-competition behaviour among the oil companies once the Competition Ordinance was fully in force. Mr TANG Ka-piu, Mr Frankie YICK and Mr LEE Cheuk-yan enquired about the actions that would be taken by the Administration to ensure a fair and competitive market of auto-fuel, instead of merely waiting for the investigation to be conducted by the Commission.

53. USEN remarked that the Administration welcomed the Commission to look into the pricing behaviour of the oil companies. The Administration would be prepared to offer assistance to provide more information to the Commission for its investigation in the future. She believed that the observations arising from the Commission's investigation would be insightful to assess the fairness of competition of the auto-fuel market.

54. The Deputy Chairman observed that the Government usually awarded PFS sites to tenderers who offered the highest bids, and hence the oil companies

which had paid hefty premiums for the sites would transfer their cost to customers. Against this background, the Deputy Chairman and Dr Fernando CHEUNG considered that the Government should review the existing arrangements as it had indirectly pushed up the pump prices. In this regard, Mr Frankie YICK suggested that the Administration could set a uniform premium toward all PFS sites and award the sites to the bidders who offered the lowest pump prices. This would help provide an incentive for the oil companies to lower their operating costs in order to maintain the pump prices at the agreed levels. USEN noted that members were keen on finding measures to mitigate fluctuations of the pump prices which however might not be addressed by changing the existing tender arrangement for PFS sites.

55. Mr TANG Ka-piu expressed concern on the availability of resources of the Environment Bureau ("ENB") in dealing with energy-related matters as the policy responsibility concerning electricity supply in Hong Kong was handled by the same team of staff. He enquired whether the Administration would consider the suggestion of the Commission and set up a new statutory body or a committee to oversee energy supply in Hong Kong. USEN advised that this was a decision rested with the Government. Nevertheless, she recalled that some LegCo Members in previous terms attempted to set up a committee to deal with oil prices, but to no avail, as it was a complicated matter in assessing the engagement of price-fixing by the oil companies or otherwise. She hoped that the Commission could soon perform such a role to facilitate competition in the auto-fuel market.

56. The Deputy Chairman and Dr Fernando CHEUNG urged the Government to reduce the duties on auto-fuel so as to relieve the burden of the general public. The Chairman suggested ENB relay the request to the Financial Services and the Treasury Bureau for their consideration.

Monitoring of domestic LPG prices

57. Members noted that the listed prices of domestic piped LPG had been reduced by around 20% from \$38/cubic meter at the beginning of July 2014 to \$31/cubic meters as at the end of January 2015. However, Mr LEE Cheuk-yan relayed the public opinion that the retail prices of LPG had only been reduced by around 10% during the same period. He requested the Administration to strengthen its monitoring role to ensure the local LPG suppliers would not take advantage of the trend movements of international LPG prices.

58. DSEN advised that, according to existing mechanism established by a major local domestic LPG supplier, prices of domestic LPG were adjusted once every three months by forecasting the import prices for the coming three months

in light of the latest international LPG price, and making positive or negative adjustment for any difference between the actual import prices and the forecast import prices in the last review. The Administration also made reference to the statistics provided by the Census and Statistics Department to follow up with the suppliers regarding their price adjustments. He supplemented that, while there was only one domestic LPG supplier adopted a voluntary pricing review mechanism, other domestic LPG suppliers had made similar adjustment in their domestic LPG prices. Mr LEE Cheuk-yan requested the Administration to provide relevant figures reflecting the movements of international LPG prices and local LPG import prices in contrast to the retail prices in domestic LPG since January 2014 with a view to showing whether the three prices were adjusted in tandem.

59. In view of the Administration's response, Mr CHAN Kam-lam considered that all domestic LPG suppliers should adopt its own pricing review mechanism to avoid the public perception of alleged price fixing among the suppliers. Mr CHAN said that the Administration should discuss with domestic LPG suppliers to enhance the transparency of the pricing mechanism by providing relevant data such as operation costs. Dr Fernando CHEUNG also commented that, for households using domestic piped LPG, consumers did not have any choice on gas supply.

60. USEN agreed that the transparency of domestic LPG pricing mechanism could be further enhanced, and she called on the local domestic LPG suppliers to take note of the public sentiment and members' views regarding their pricing behaviour. The Administration would discuss with them about further disclosure of information to enhance transparency.

Conclusion

61. The Chairman concluded that the public perception of "quick going up, slow going down" regarding auto-fuel and domestic LPG prices still remained although some improvements were observed recently probably due to the urge of the Administration. In the long run, the Administration should endeavour to strengthen its monitoring role to enhance transparency of pricing mechanisms of auto-fuel and domestic LPG prices.

VI. Any other business

62. There being no other business, the meeting ended at 1:02 pm.