

**立法會**  
**Legislative Council**

LC Paper No. CB(4)737/15-16  
(These minutes have been seen  
by the Administration)

Ref : CB4/PL/EDEV

**Panel on Economic Development**

**Minutes of meeting**  
**held on Monday, 23 November 2015, at 9:30 am**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon James TIEN Pei-chun, GBS, JP (Chairman)  
Hon Jeffrey LAM Kin-fung, GBS, JP (Deputy Chairman)  
Hon CHAN Kam-lam, SBS, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon WONG Ting-kwong, SBS, JP  
Dr Hon LEUNG Ka-lau  
Hon Paul TSE Wai-chun, JP  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, JP  
Hon YIU Si-wing, BBS  
Hon Charles Peter MOK, JP  
Hon Kenneth LEUNG  
Hon Dennis KWOK  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon CHUNG Kwok-pan  
Hon Tony TSE Wai-chuen, BBS

**Member attending** : Hon LEE Cheuk-yan

**Members absent** : Dr Hon LAM Tai-fai, SBS, JP  
Hon Albert CHAN Wai-yip  
Hon WU Chi-wai, MH  
Hon SIN Chung-kai, SBS, JP  
Dr Hon Elizabeth QUAT, JP  
Hon TANG Ka-piu, JP

**Public Officers  
attending**

: Agenda items IV and V

Mr WONG Kam-sing, JP  
Secretary for the Environment

Mr Vincent LIU, JP  
Deputy Secretary for the Environment

Mr Donald NG  
Principal Assistant Secretary for the Environment  
(Electricity Reviews)

Ms Esther WANG  
Principal Assistant Secretary for the Environment  
(Financial Monitoring)

Mr Alan CHOW  
Chief Electrical and Mechanical Engineer  
(Electricity Team)  
Environmental Bureau

Agenda item V

Miss Ada CHEN  
Senior Assistant Law Officer (Civil Law)  
Department of Justice

Agenda item VI

Professor Anthony CHEUNG, GBS, JP  
Secretary for Transport and Housing

Miss Joey LAM  
Deputy Secretary for Transport and Housing  
(Transport)5

Miss Joyce CHAN  
Assistant Secretary for Transport and Housing  
(Transport)11A

Agenda item VII

Ms Elaine HUI  
Assistant Director (Market and Competition)  
Office of the Communications Authority

Ms Helen LAI  
Head, Market and Competition 1  
Office of the Communications Authority

**Related  
organizations**

: Agenda item VI

Tricor Consulting Limited

Mr John NG  
Managing Director

Ms Rachel CARTLAND  
Contract Senior Consultant

Ms Ashley SEE  
Senior Consultant

Agenda item VII

Competition Commission

Hon Anna WU, GBS, SBS, JP  
Chairperson

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

Ms Zoe TONG  
Legislative Assistant (4)5

Action

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**I. Confirmation of minutes of meeting**

(LC Paper No. CB(4)215/15-16 — Minutes of meeting held on 26 October 2015)

The minutes of the meeting held on 26 October 2015 were confirmed.

**II. Information papers issued since the last regular meeting**

(LC Paper No. CB(4)107/15-16(01) — Letter dated 20 October 2015 from Hon TANG Ka-piu on issues relating to inbound Mainland tourists joining zero/negative fare tour packages (Chinese version only)

LC Paper No CB(4)157/15-16(01) — Administration's paper on tables and graphs showing the import and retail prices of major oil products from October 2013 to September 2015)

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

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

(LC Paper No. CB(4)217/15-16(01) — List of outstanding items for discussion

LC Paper No. CB(4)217/15-16(02) — List of follow-up actions)

3. Members agreed to discuss the following items at the next regular meeting scheduled for Tuesday, 15 December 2015 –

- (a) Annual tariff reviews with the two power companies; and
- (b) Food Trucks Scheme.

4. Members noted that the discussion of the item on "The deployment of the new Air Traffic Management System for Hong Kong International Airport and the related safety issues" had been rescheduled to the meeting on 23 March 2016.

*(Post-meeting note: The regular meeting originally scheduled for 23 March 2016 had been rescheduled to Thursday, 24 March 2016 at 10:45 am.)*

**IV. Public consultation on the future development of the electricity market**

(LC Paper No. CB(4)217/15-16(03) — Administration's paper on future development of the electricity market

LC Paper No. CB(4)217/15-16(04) — Paper on future development of the electricity market prepared by the Legislative Council Secretariat (updated background brief))

**V. Proposed extension of two supernumerary posts to take forward the outcome of the public consultation on the future development of the electricity market**

(LC Paper No. CB(4)217/15-16(05) — Administration's paper on taking forward the outcome of the public consultation on the future development of the electricity market – extension of two supernumerary posts

LC Paper No. CB(4)217/15-16(04) — Paper on future development of the electricity market prepared by the Legislative Council Secretariat (updated background brief))

5. Members agreed to combine the discussion of agenda items IV and V as they were closely related.

Presentation by the Administration

6. At the invitation of the Chairman, Secretary for the Environment ("SEN") briefed members of the views received during the public consultation on the future development of the electricity market conducted from 31 March to 30 June 2015 ("the Consultation"). He said that in addition to having received views from the some 16 000 submissions, the Administration had also attended over 25 engagement sessions and held a public forum to solicit views. Having regard to views received, the Administration planned to put forward improvement proposals to the future contractual arrangement between the Government and the two power companies, such as reducing the permitted rate of return ("RoR"), enhancing the promotion of energy efficiency and conservation ("EE&C") and renewable energy ("RE"), improving the incentive and penalty scheme to enhance power companies' performance, increasing information transparency of the power companies and conducting studies to pave the way for introducing competition in the long run.

7. On permitted RoR, SEN highlighted that taking into account views received through different channels, the prevailing economic environment as well as comparable investments overseas, the Administration considered that there was room for reduction in the permitted RoR. The Administration would commission a further study to revise the permitted RoR to the appropriate level having regard to the current global market conditions. SEN said that the level of the permitted RoR would be considered together with other improvement proposals of the new contractual arrangement.

8. SEN also sought members' views on the Administration's proposal to extend two supernumerary posts which were created in 2014 in the Environment Bureau ("ENB") and the Department of Justice ("DoJ") respectively to undertake the review of the electricity market. The said posts would continue to head a dedicated team each in ENB and DoJ to undertake the negotiation with the power companies and implement the outcome. As the negotiation with the power companies was expected to be lengthy and intensive, dedicated teams were necessary to ensure that adequate resources would be provided to undertake the highly-demanding and complicated tasks involved. Further details of the Consultation outcome and the staffing proposal were set out in the Administration's papers (LC Paper Nos. CB(4)217/15-16(03) and (05)).

## Discussion

### *Introduction of competition*

9. Mr Tony TSE relayed the responses of his constituencies in the architectural, surveying and planning sectors to the Consultation that reliability of electricity supply was of utmost importance followed by affordability, and the power supply in Hong Kong was performing well on these areas. While the sectors were open to the idea of introducing competition to the electricity market, they suggested that changes could be made based on the existing regulatory framework.

10. Noting that the business sector was in general less positive about the introduction of competition, Mr Frankie YICK opined that the sector was more concerned about the stability and affordability of power supply, and their support for the introduction of competition would depend on the strategy to be adopted.

11. Mr CHAN Kam-lam considered that the Administration should study in detail the public views received in response to the Consultation, and address the public concerns about the natural monopoly of the electricity supply market. For example, the power companies should maintain reliability of power supply at affordable tariff level, and source fuels used for electricity generation at reasonable prices etc. He remarked that the power companies, being public utilities, should shoulder social responsibility on environment protection and market development in order to obtain a reasonable return.

12. SEN said that the Consultation had achieved a high response rate and views received were generally in line with the Administration's four energy policy objectives of safety, reliability, affordability and environmental protection. He said that the Consultation outcome had provided a good basis for formulating improvement proposals to the new Scheme of Control Agreements ("SCAs"), and the Administration would take into account views received when negotiating with the two power companies the future contractual arrangement.

13. Mr Frankie YICK suggested that the power companies could increase their interconnection to enable a reduction of their reserve margins and hence the electricity tariff. He also requested the Administration to provide written information on the pros and cons of increased interconnection between the two power companies' facilities, including an analysis on the level of tariff reduced over a longer term as a result of the estimated cost of investment, and the reduction of reserve margins etc.

14. SEN advised that the existing interconnection between the two power companies had already served the function of reducing the reserve capacity each power company required, and enhancing the interconnection could not help further reduce each of their reserve margin. Deputy Secretary for the Environment ("DSEN") elaborated that enhancing interconnection would incur additional substantial upfront investment equivalent to the installation cost of several gas generation units which would have tariff implications. Besides, the reserve margin of the two power companies was expected to be at around 20% to 30% at the end of this SCA period. The Administration's current assessment was that enhancing interconnection at this stage might not bring concrete benefits to the consumers in the near term. The consideration might however be different in the longer term. If it was decided that electricity from the Mainland should be imported in future to allow more choices for consumers, the two existing local power grids would have to be better connected, and it would be more cost-effective to consider how to strengthen the interconnection between the two existing power companies in that context. He undertook to provide further supplementary information on this matter afterwards.

15. Echoing Mr Frankie YICK's views that a detailed analysis on the matter of increased interconnection between the two power companies could help Members to decide whether to pursue the subject, Mr CHAN Kam-lam considered that to enhance its bargaining position, the Administration should have a stance on the matter before entering into negotiation for the next SCAs with the two power companies.

*(Post-meeting note: The Administration's response was issued to Members vide LC Paper No. CB(4)351/15-16(01) on 14 December 2015.)*

16. Mr LEE Cheuk-yan was very disappointed about the Administration's work to increase interconnection between the two power companies undertaken by former bureau directors, namely, Mr Stephen IP Shu-kwan and Dr Sarah LIAO Sau-tung, since more than a decade ago. As no progress had been made so far, the objective of introducing competition to the electricity supply market appeared as an empty promise. Now, the focus was shifted to the promotion of RE which, in his opinion, would be implemented in small scale, and could not bring any real competition and benefit the customers. Mr LEE expressed grave concern about the status quo of maintaining the monopoly of the electricity supply market. He cautioned the Administration not to use the outcome of the Consultation as an excuse to continue the current contractual arrangement by SCAs. As regards the Consultation, Mr LEE commended the work of the public relation teams of the two power companies, but urged the Administration to consult the 18 newly-elected District Councils. In response,

SEN said that views received during the Consultation were very well balanced and largely in line with the Administration's four energy policy objectives. The Administration would take into account views received through different channels when charting the way forward. Noting the Administration's response, Mr LEE requested to put on record his dissatisfaction that the Administration had no intention to consult the District Councils.

*Future regulatory and contractual arrangements – permitted RoR*

17. Given the public concern on environmental protection, Mr Tony TSE suggested allowing the power companies to reap returns on their investment in promoting RE and EE&C as an incentive to encourage better environmental performance. DSEN remarked that there was a clear consensus that future contractual arrangement should be crafted to better help promote energy saving and conservation. Some respondents suggested that an incentive and penalty scheme should be in place to encourage energy saving by power companies. The Administration would take into account these views in negotiating the new SCAs with power companies.

18. Mr YIU Si-wing urged that, given the power supply in Hong Kong was already quite sophisticated in terms of its safety, reliability and affordability, it was important to make Hong Kong a more advanced city in the environmental performance, and EE&C on electricity supply. To this end, he agreed that the permitted RoR for power companies could be maintained at the current level of 9.99% in exchange for better environmental performance. SEN said that while the current electricity supply was safe and reliable at affordable price, the Administration would consider how to move forward to further enhance the environmental performance. The Administration would consider the permitted RoR together with other improvement proposals in totality and ensure that the four energy policy objectives would continue to be achieved.

19. Mr Frankie YICK enquired if there were other ways to reduce the tariff level apart from reducing the permitted RoR. SEN responded that apart from the permitted RoR, the tariff level could be affected by a host of factors. For instance, enhanced efforts on EE&C might reduce electricity consumption, while adoption of RE might have higher tariff implications. There were also views suggesting that the tariff approval mechanism should be tightened by extending the tariff approval to cover fuel costs.

20. Mr LEE Cheuk-yan expressed grave concern that the electricity customers had long been suffering from a high tariff level arising from the power companies' seeking to maximize their profits by yielding the permitted RoR of 9.99%. He was very concerned whether the permitted RoR would be

reduced in the new SCAs. SEN said that it was worth noting that the electricity tariff of Hong Kong was lower than that of many major cities in the world. Nevertheless, the Administration considered that there was a case to lower the permitted RoR in view of the current market conditions.

21. The Chairman remarked that the reason for a low tariff level in Hong Kong was due to its much lower investment on electricity distribution facilities since it had the highest density with the smallest geographical area among the major cities in the world. He recalled that the permitted RoR had been set in 15% in 1998 when the rates of interest and inflation were both double-digit high. However, it had not been reasonable for the permitted RoR to be set at 9.99% for the SCAs commencing in 2008. He shared Mr LEE Cheuk-yan's concern that the power companies sought to yield 9.99% of return as permitted to maximize their profits, and opined that reducing the permitted RoR was the most effective way to lower the tariff level.

22. In considering the basis for a reasonable return for the power companies, the Chairman highlighted the sluggish global economy with a decreasing investment return and a low interest rate. For example, the current 30-year United States Treasury yield was only 2% to 3% and the investment return of the Exchange Fund managed by the Hong Kong Monetary Authority was only 1.4% in 2014. In light of this, he considered that the permitted RoR in the new SCAs should be reduced to the level lower than the range of 6% and 8% as suggested by the Administration's consultant. He added that the permitted RoR should be reviewed once every five years.

23. SEN said that the electricity tariff in Hong Kong had been maintaining at a reasonable level and was significantly lower than that of other comparable cities like Singapore. The Administration would commission a consultancy study to revise the permitted RoR to the appropriate level having regard to the current global market conditions, as well as the return level of comparable power utilities in overseas jurisdictions. In response to the Chairman's enquiry, DSEN said that for the power utilities in Macao and some of the cities in Australia and the United States, their return rates in respect of power generation and distribution businesses ranged from 6% to 10%.

*Future regulatory and contractual arrangements – duration*

24. Mr Tony TSE enquired about the duration of the new SCAs which, in his opinion, was a crucial factor in determining the permitted RoR for the power companies. DSEN advised that the duration of the current SCAs was ten years, with an option exercisable by the Government to extend the term for five more years to provide flexibility for making changes as necessary. The majority of

the respondents in the Consultation supported maintaining the current arrangement. The Administration would take into account public views when negotiating the new SCAs with the power companies.

25. The Chairman considered that the duration of the new SCAs should be shortened to five years with an option to extend five years, given that the power companies had made huge investments and hence would continue to provide electricity supply service anyway. He also enquired about the duration of contractual agreements for electricity utilities in other jurisdictions. DSEN advised that the electricity markets in many overseas cities were liberalized and the power utilities did not enter into contractual agreements with the governments. On new investments by the existing two power companies, DSEN said that new generating units would need to be constructed to replace the retiring coal-fired generating units and to improve the fuel mix for electricity generation.

#### *Promotion of RE and demand side management*

26. Mr YIU Si-wing asked the Administration to give more information about the RE development and Mr Kenneth LEUNG enquired about the edge of Hong Kong in the use of solar power. Mr LEUNG also asked in addition to providing a higher permitted RoR for RE infrastructure investment (i.e. 11% instead of 9.99% for non-RE infrastructure investment), what other measures would be undertaken by the Administration to further promote the development of RE. Noting that before the introduction of the Public Consultation on the Future Fuel Mix for Electricity Generation in 2014, the Administration proposed a strategy of increasing the share of RE in the fuel mix to about 3%, Mr LEUNG considered such percentage too low, in particular if waste-to-energy was also included. He asked whether the Administration would consider requiring the power companies to adopt certain percentage of RE in their fuel mix in the new SCAs. In addition, he noted that while CLP Power Hong Kong Ltd. and Castle Peak Power Company Ltd. (collectively referred as "CLP") were willing to explore the introduction of smart metering, The Hongkong Electric Company Ltd. ("HEC") was not keen to the proposal. He urged the Administration to require both companies to install smart meters for their customers under the new SCAs. SEN took note of Mr LEUNG's request for consideration.

27. DSEN responded that developing large-scale solar energy might not be cost-effective due to the high capital cost and the geographical constraints of Hong Kong. The Administration considered it more effective to promote small-scale distributed RE generation. Based on the outcome of the Consultation, the community in general supported the development of

small-scale distributed RE generation. The Administration would draw up specific proposals for the new SCAs in respect of this area. With regard to the various waste-to-energy facilities completed or being planned, the RE generated was estimated to be able to meet about 1% of Hong Kong's total electricity demand by the early 2020s.

28. Mr LEE Cheuk-yan expressed concern about the grid access arrangement by RE generators. In response, SEN said that under the current SCAs, the power companies should allow grid access by distributed RE facilities to the existing power grids. However, the Administration considered that the existing arrangements should be improved to better facilitate grid connection for distributed RE generators to encourage their development, and the Administration would pursue this when negotiating with the power companies the future contractual arrangement. In response to Mr LEE's concern on the scale of such grid connection under the current SCAs, SEN said that such arrangement applied to the installation of solar panels on the roofs of multi-storey buildings and the scale of such connection could be large.

29. Mr YIU Si-wing requested the Administration to provide, in respect of a total of 15 762 submissions received in the Consultation, a summary of views categorizing respective views and concerns such as promotion of RE and energy saving, the nature and number of respondents providing such views for members' reference and follow-up. DSEN undertook to provide a written response after the meeting.

*(Post-meeting note: The Administration's response was issued to Members vide LC Paper No. CB(4)351/15-16(01) on 14 December 2015.)*

#### *Implementation of the new fuel mix in 2020*

30. Ir Dr LO Wai-kwok noted that the new fuel mix for electricity generation in 2020 would increase the percentage of natural gas to around 50%, and maintain the current interim measure to import additional 10%, i.e. from 70% to 80% of the nuclear output from the Daya Bay Nuclear Power Station ("DBNPS") so that nuclear import would account for around 25% of the total fuel mix. He enquired about the measures to be taken in the coming five years to tie in with the new fuel mix target, such as investment on new gas-fired generating units and/or infrastructure for importing the additional nuclear output from DBNPS.

31. DSEN said that both CLP and HEC would need to construct new generating units to meet the fuel mix target of increasing the proportion of natural gas generation to around 50% in 2020. The Administration had given

approval to HEC the construction of a new gas-fired unit which would be available in 2020. CLP was conducting an Environmental Impact Assessment on its new gas-fired unit, and it was estimated that CLP would submit its proposal for the Administration's consideration in 2016. He also understood that CLP had started negotiation with DBNPS on maintaining the current arrangement of importing 80% of the nuclear output from DBNPS after 2018.

32. Mr Kenneth LEUNG enquired if the Administration would adopt measures to encourage the installation of floating liquefied natural gas ("LNG") storage in Hong Kong by the power companies. DSEN advised that one of the power companies was studying the feasibility of installing a floating LNG terminal. The Administration would assess the feasibility and cost effectiveness of such project as well as its implications on the environment and marine safety etc. upon receipt of the power company's proposal. Mr LEUNG urged ENB to take initiative, which might involve different bureaux and departments, to provide facilitation as early as possible in implementing the project. DSEN advised that other relevant departments were involved in the said study conducted by the power company, and the Administration would evaluate the project's feasibility when the final proposal was received.

33. Given that the existing gas supplies from Yacheng had been fast-depleting and the piped gas through the Mainland's Second West-East Natural Gas Pipeline ("WEPII") which was relatively more expensive would become the major gas source afterwards, Ir Dr LO Wai-ki enquired if the Administration would encourage power companies to explore other gas sources so as to address the long term need of gas for Hong Kong. DSEN replied that apart from gas supply via WEPII, the power companies were also exploring other new gas sources, with a view to diversifying the sources of gas supply.

#### *Staffing proposal*

34. Noting that the supernumerary post of the Administrative Officer Staff Grade C in ENB proposed to be extended mainly focused on negotiating for a new set of SCAs, Mr Tony TSE expressed concern that the scope of duties might be too narrow. DSEN advised that apart from undertaking the negotiation with the power companies, the post proposed to be extended would also work with other teams in ENB on policy matters relating to promotion of RE and EE&C etc.

35. Mr YIU Si-wing opined that the staffing proposal would only be justified if new changes would be introduced to the electricity market with a view to making Hong Kong a more advanced city in terms of environmental protection, and EE&C. In response, SEN remarked that while the current electricity

supply had generally achieved the four energy policy objectives, the Administration would consider how to further improve the regulatory regime and draw up improvement proposals for the new SCAs on such areas of RE promotion and EE&C taking into account views received during the Consultation.

*Way forward*

36. Both the Chairman and Mr CHAN Kam-lam enquired about the timing for briefing Members the finalized terms of SCAs, in particular the level of permitted RoR before negotiating with the power companies. The Chairman cautioned that as it was running up to the expiry of the current SCAs in 2018, the Administration should speed up its work to finalize the proposed terms for the new SCAs without further delay. SEN replied that the Administration would take into account views received during the Consultation and the updated findings of the consultancy study on the permitted RoR when deciding the level of the permitted RoR. He also remarked that when negotiating with the power companies a new set of SCAs, the Administration would consider the permitted RoR together with other elements in the new regulatory arrangement as a package, having regard to the four energy policy objectives.

Conclusion

37. The Chairman concluded that the Panel was generally supportive of the Administration's staffing proposal. He also drew the Administration's attention to Members' concerns which should be taken into consideration for preparing the final proposal for the coming negotiation with the power companies.

**VI. Proposed establishment of a maritime body for promoting the development of the maritime industry in Hong Kong**

(LC Paper No. CB(4)217/15-16(06) — Administration's paper on the setting up of a new maritime body for the further development of the maritime industry

LC Paper No. CB(4)217/15-16(07) — Paper on proposed establishment of a maritime body for promoting the development of the maritime industry in Hong Kong prepared by the Legislative Council Secretariat (updated background brief))

Presentation by the Administration and Tricor Consulting Limited

38. At the invitation of the Chairman, Secretary for Transport and Housing ("STH") briefed members on the findings of the Business Case Study Consultant ("the Consultant"), i.e. Tricor Consulting Limited ("TCL"), which was commissioned by the Transport and Housing Bureau ("THB") to look into the business case of setting up a new maritime body. To ensure the influence of the new body on the Government's policy making and reinforce Government's commitment to the maritime and port sectors, the Consultant proposed that the new maritime body should be a high-level steering body chaired by STH and cover not only maritime services sectors but also port-related/international shipping development in its scope of work. The Consultant also recommended that three functional committees chaired by industry representatives should be formed under the proposed new body to enhance the engagement and involvement of the industries in the policy-making process.

39. STH added that the Consultant held the view that it was not essential for the new maritime body to be a "statutory" body. However, the Administration noted the aspirations from the industry that the setting up of a statutory body in the long term should not be ruled out. The Administration would keep an open mind on the latter. The actual experience of the proposed new body, after it had been set up and in operation for some time, could serve as a reference and provide the basis for further discussions on the need for a statutory body when the critical issues on funding and sustainability were addressed. Further details of STH's briefing were set out in the Administration's paper (LC Paper No. CB(4)217/15-16(06)).

40. With the aid of power-point presentation, Mr John NG, Managing Director of TCL, briefed members further on the findings of the study.

*(Post-meeting note: The power-point presentation material tabled at the meeting was issued to members vide LC Paper No. CB(4)249/15-16(01) on 23 November 2015.)*

Discussion

*Aspiration for forming a statutory maritime body*

41. Mr YIU Si-wing expressed support for the establishment of a new maritime body to assist the Administration in policy making and implementation. However, he expressed doubts on the authority of the body if it would just be

a consultative committee. To strengthen the status of the new maritime body before it was upgraded to be a statutory body, he suggested the Administration drawing reference from other public bodies, such as the Insurance Authority, and delegating to the new body specific powers, such as provision of certification and mediation services to champion industry development. The new body could also serve as a platform to provide its professional views on relevant matters publicly for the consideration of the Administration before it made its decisions.

42. STH explained that unlike the present Hong Kong Maritime Industry Council ("MIC") and Hong Kong Port Development Council ("PDC"), which were advisory bodies chaired by him, the proposed new body would be a high-level steering body performing beyond the advisory function. The Administration understood the aspirations from the industry for the establishment of a statutory body. Nonetheless, given that the functions to be performed by the new maritime body would not require statutory backing, the Consultant recommended a phased approach. He stressed that the establishment of the proposed new body was a pragmatic step forward and its actual operation could serve as a reference and provide the basis for review. The proposal was in fact supported by MIC, PDC and the Hong Kong Logistics Development Council ("LOGSCOUNCIL").

43. On the suggestion to empower the new body to perform mediation functions, STH explained that a mediation system was already in place in Hong Kong for resolving disputes among organizations. As for accreditation, STH explained that there were a number of training programmes available for the maritime industry and financial support could be sought from the Maritime and Aviation Training Fund. In addition, the Marine Department ("MD") was responsible for accrediting courses and qualifications. MD would continue to perform such functions.

44. Mr Frankie YICK stressed that the stakeholders of the port and maritime industries had strived for the establishment of a new statutory body for about two decades with a view to enhancing Hong Kong's position as an international maritime and logistics services hub. It was indeed the consensus of MIC, PDC and LOGSCOUNCIL that a statutory body should be set up in the long run. He did not agree with the Consultant's view that it was not a requisite for the new maritime body to be a statutory body because the functions identified by the Consultant could all be performed administratively. Highlighting the Maritime and Port Authority of Singapore ("MPA"), Mr YICK stressed that the new maritime body should be entrusted with more powers and functions to drive the further development of the maritime industry. Nevertheless, noting that the establishment of the statutory body would require considerable time, the three

councils would like the new body be established quickly first, and hoped that the Administration would proceed to set up the statutory body thereafter. Mr Kenneth LEUNG also relayed the views of the maritime industry that a statutory body should be established instead of the one under the proposal.

45. STH responded that the Administration maintained an open mind on the suggestion of establishing a statutory body in the long run, having regard to the statutory functions it should be empowered to perform through legislation. He pointed out that MPA of Singapore was a regulatory and enforcement authority. In Hong Kong some of these functions were currently performed by Government departments, such as MD being the port authority. He expected that a review of the overall regulatory regime for the industry would be necessary if a statutory maritime body was to be established. He noted the industry's support for establishing a non-statutory body in the interim to serve as a reference and provide a basis for future consideration of the need for a statutory body.

46. Mr CHAN Kam-lam expressed support for the new body which might provide more robust inputs to the Government in formulating policy and measures for the development of the maritime industry. He also agreed to the adoption of a progressive approach with the option of forming a statutory body being explored after the new body had been in operation for some time, and upon the amalgamation of current members in MIC and PDC.

47. Mr Kenneth LEUNG opined that the proposed new body was something in between consultative committee and statutory body, similar to the Financial Services Development Council proposed for establishment some three years ago. He enquired about the source of power and financial resources for supporting the operation of the new body.

48. STH responded that the new body would be a non-statutory high-level steering body which had the mandate to advise the Government on matters regarding the maritime- and port-related industries and make decisions in various areas, including the manpower development and marketing plans for the industry. THB would allocate financial resources for its operation, which was similar to the arrangement for District Councils.

49. Recalling his suggestion made in about a year ago to restructure THB given its portfolio was too broad, Mr Kenneth LEUNG relayed the views of the respective industries that Hong Kong should be positioned as the aviation and maritime hub in the region and even in the world in the 21<sup>st</sup> century. To achieve the mission, he hoped that a separate bureau focusing on transport policies could be set up, and then a dedicated body might be formed under it to drive the development of the maritime industry in the long run. In response, STH said that the Administration would not take forward any restructuring proposal in its current term.

*Provision of a one-stop communication window*

50. Mr Charles MOK relayed the concern of the maritime and information technology sectors that Hong Kong was lagging behind some overseas and Mainland ports in the development of the one-stop communication window ("single window") for the maritime communities. He believed that the single window initiative should be more than just a website covering trade declarations etc. and publishing industry information and trends. Mr MOK urged the Administration to make reference to business models of similar initiative overseas to see if the proposed single window could be connected with other platforms, such as single windows of other economies and third-party logistics. Expressing concern that some industry players might not be willing to publish its information through the single window, Mr MOK urged the Administration to require leading companies engaged in logistics and transportation to open up relevant data for sharing by industry players.

51. STH stressed that the Administration was keen to promote single window which would affect not only the maritime industry but also other business and trading sectors. He understood that the Commerce and Economic Development Bureau was working on this matter.

52. Mr John NG of TCL supplemented that the key objective of developing a single window platform was to provide important and useful information for the industry players with a view to facilitating the development of the maritime and port industry. To enhance the willingness of stakeholders and related parties in providing information and attract their participation, Mr NG suggested introducing a subscription system under which members would receive useful information to facilitate their business operations.

Conclusion

53. Summing up, the Chairman requested the Administration to take note of members' concerns raised at the meeting.

**VII. Competition Commission's preparation for full commencement of the Competition Ordinance**

(LC Paper No. CB(4)217/15-16(08) — Competition Commission's paper on its preparation for full commencement of the Competition Ordinance

LC Paper No. CB(4)217/15-16(09) — Paper on preparations made by the Competition Commission for the full commencement of the Competition Ordinance prepared by the Legislative Council Secretariat (updated background brief))

### Presentation by the Competition Commission

54. At the invitation of the Chairman, Ms Anna WU, Chairperson of the Competition Commission ("the Commission") briefed members on the preparations undertaken by the Commission to prepare for the full commencement of the Competition Ordinance (Cap. 619) ("the Ordinance") on 14 December 2015, including the enforcement policy and the cartel leniency policy. A wide range of activities were also organized to promote understanding of the Ordinance among businesses and the local community, and to prepare them for the commencement of the Ordinance.

55. Ms Rose WEBB, Senior Executive Director of the Commission briefed members on the promulgation of the six published guidelines required by the Ordinance, the guidance notes on "Fees Payable for Making an Application to the Competition Commission" and "How to assess turnover for the Exclusions from the Competition Ordinance Conduct Rules", and the policy documents "Enforcement Policy" and "Leniency Policy for Undertakings Engaged in Cartel Conduct". She also said that the Memorandum of Understanding ("MOU") between the Commission and the Communications Authority ("CA") for the purpose of co-ordinating the performance of their functions under the Ordinance had been finalized and would be signed soon after the commencement of the Ordinance. Mr Rasul BUTT, Executive Director (Corporate Services and Public Affairs) of the Commission also gave a brief account on the education and assistance activities of the Commission.

### Discussion

#### *Leniency policy*

56. As leniency was a key investigative tool used by competition authorities to combat anti-competitive conduct, Mr Charles MOK queried why the leniency policy would only be applied to cartel conduct. Since CA would, different from the Commission's approach, consider making leniency agreements with the telecommunications and broadcasting licensees on a case-by-case basis without

adopting any policy, Mr MOK asked how CA would deal with such kind of applications. He was also concerned about the conduct of matters which fell within the concurrent jurisdiction of CA and the Commission. The variation in approaches between the two Authorities might easily give rise to cases of judicial review.

57. Ms Anna WU of the Commission said that the cartel leniency policy was intended to discourage the continuation of cartel conduct and the formation of cartels. Notwithstanding, the present policy did not preclude the Commission from entering into leniency agreements in respect of an alleged contravention of a conduct rule which was not covered by the policy. The Commission would consider each case on its own merits. The "Enforcement Policy" provides further information on cooperation with Commission investigations other than applications under the leniency policy.

58. On handling leniency applications in respect of the telecommunication and broadcasting sectors under the Ordinance, the Assistant Director (Market and Competition) of the Office of the Communications Authority ("AD(MC)") said that having considered the views received from stakeholders and taking into account its experience in enforcing the competition provisions under the Telecommunications Ordinance and the Broadcasting Ordinance, CA had decided not to adopt a leniency policy for its enforcement of the Ordinance. Nevertheless, it would consider making leniency agreements with the licensees on a case-by-case basis, in accordance with the relevant provisions of the Ordinance and the actual circumstances of the cases on which it had concurrent jurisdiction with the Commission.

59. AD(MC) advised that competition cases, including the related leniency applications, would be handled by the two Authorities according to the arrangements set out in the MOU. For cases involving the telecommunications and broadcasting sectors and falling within concurrent jurisdiction, CA would ordinarily take the role of the lead authority, given its sectoral expertise in the telecommunications and broadcasting sectors. AD(MC) said that the proposed framework under the MOU had been designed to facilitate the efficient and effective handling of matters falling within concurrent jurisdiction and avoid duplication.

60. Ms Anna WU of the Commission supplemented that the Commission and CA had jointly issued the Guidelines on how they intended to interpret and apply the provisions in the Ordinance so there should not be any discrepancy in this regard. In addition, it was set out in the MOU that both authorities would ensure a consistent interpretation and application of the provisions of the Ordinance and would not hinder each other in the enforcement of the law.

61. Mr Kenneth LEUNG enquired about the application of the cartel leniency policy and whether an employee who breached the employment contract to reveal the company's cartel conduct to the Commission would be protected from being sacked under the policy. He also asked whether the leniency agreement would have any legal binding effect.

62. Mr Jeffrey LAM relayed the concerns of the Hong Kong General Chamber of Commerce that since the competition law was a novel concept in Hong Kong and brought along a huge cultural shift for businesses, it was premature to introduce the leniency policy at the beginning of the commencement of the Ordinance. He also enquired how individual whistleblowers would be protected if their employers did not enter into leniency agreements with the Commission.

63. Ms Rose WEBB of the Commission explained that the leniency policy was designed to provide a strong and clear incentive for a cartel member to stop the cartel conduct and to report it to the Commission. In exchange for a cartel member's cooperation, the Commission would agree not to commence proceedings for a pecuniary penalty against the first cartel member who reported the cartel conduct to the Commission and met all the requirements for receiving leniency under the policy. The Commission would extend that leniency to current officers and employees of the cartel member and specifically named former officers or employees and current and former agents of the cartel member who cooperated with the Commission. The Commission would use its best endeavours to appropriately protect any confidential information provided to the Commission by a leniency applicant for the purpose of making a leniency application and/or pursuant to a leniency agreement.

64. Ms Anna WU of the Commission supplemented that leniency was a key investigative tool used by competition authorities around the world. The cartel leniency policy enabled the Commission to obtain evidence more efficiently and effectively leading to quicker resolution of the Commission's investigation of cartels. In addition to the leniency policy, the Commission had also published an Enforcement Policy which provides further information on cooperation with Commission investigations other than through leniency applications.

#### *Enforcement policy*

65. Mr Paul TSE enquired about the enforcement policy of the Commission and the standards being applied for decisions to enforce. Ms Anna WU of the Commission explained that the Commission had issued two important documents, namely the "Enforcement Policy" and the "Leniency Policy for

Undertakings Engaging in Cartel Conduct" which provided details of how the Commission intended to carry out its enforcement function under the Ordinance. On major issues the Commission would make decisions based on the principles described which would take into consideration proportionality for instance and the Commission would be held accountable as a general proposition to various stakeholders.

66. Ms Rose WEBB of the Commission said that as the Commission would be enforcing the Ordinance through civil proceedings, it would have some discretion regarding which cases to take to the Tribunal. In this regard the Commission had published two documents: the Enforcement Policy outlines the factors which the Commission would consider whether to investigate and the actions the Commission would take when a contravention has taken place, including the range of remedies which may be used instead of bringing the case to the Tribunal; under the Leniency Policy, the Commission would not seek a pecuniary penalty for the first successful applicant but would seek a declaration that they have contravened the Ordinance.

67. Mr Paul TSE was also concerned that the Commission had enjoyed wide discretionary power in enforcement which might give rise to concern on enforcement fairness.

68. Ms Rose WEBB of the Commission said that the Commission had published a detailed Enforcement Policy and would keep it under review and update it from time to time. As set out in the Policy, investigations would be conducted in accordance with six core principles which were professional, confidential, engaged, timely, proportionate and transparent. The Commission would continue to explain its priorities to the public.

69. In response to Mr Kenneth LEUNG's enquiry about the scope of the turnover-based exclusions under sections 5 and 6 of Schedule 1 to the Ordinance, Ms Anna WU of the Commission clarified that unless serious anti-competitive conduct was involved, the First Conduct Rule did not apply to agreements and concerted practices if the combined turnover of the undertakings involved did not exceed the turnover threshold. Ms Rose WEBB of the Commission added that serious anti-competitive conduct was defined in the Ordinance as price fixing, market sharing, restricting output and bid-rigging.

70. Mr Dennis KWOK enquired about the financial provision allocated to the Commission for conducting investigations and handling litigation, and for settling the resultant litigation cost. He enquired if a litigation war chest would be established. Ms Anna WU of the Commission said that at present there was no separate provision for litigation purpose. In this respect, she had been discussing with the Administration on the related matter.

71. Mr Dennis KWOK requested the Administration to provide details of the financial provision granted to the Commission, in particular the provision for investigation and litigation, and whether consideration would be given to setting up a designated fund to settle the legal costs incurred by the Commission.

*(Post-meeting note: The Administration's response was issued to Members vide LC Paper No. CB(4)293/15-16(01) on 2 December 2015.)*

*Trade concerns*

72. Mr Frankie YICK relayed the concern of the Hong Kong Liner Shipping Association and enquired about the transitional arrangements following the date of full commencement of the Ordinance for conduct covered by an Application for a Block Exemption Order under Section 15 of the Ordinance.

73. Ms Anna WU of the Commission explained that the Ordinance did not provide for a grace period and the Commission had to act according to the law. Notwithstanding, the Commission had exercised its discretion and decided that it might, in specific cases, indicate to Applicants that it would be unlikely to initiate enforcement action in respect of conduct or arrangements already existing at the date of full commencement of the Ordinance while it was considering an Application in respect of that conduct or the relevant arrangements. The Commission would consider whether it would give such an indication on a case by case basis. The Commission would review these transitional arrangements after the Ordinance had been in full effect for six months. Ms Rose WEBB of the Commission supplemented that the Commission was engaging in communications with the Hong Kong Liner Shipping Association.

74. Mr YIU Si-wing said that the travel and tourism industry had made the necessary changes to prepare for the commencement of the Ordinance. However, to address the issue of Mainland inbound tourists joining zero fare tour packages, the Secretary for Commerce and Economic Development ("SCED") had announced six new measures to curb the issue, one of which was to provide information of the service costs for receiving Mainland inbound tour groups so as to enhance market transparency. He enquired if this measure would be caught by the Ordinance.

75. Ms Anna WU of the Commission said that trade practices aiming at enhancing market efficiency and consumer protection would be excluded from the Ordinance subject to certain requirements. There was no requirement for undertakings to apply to the Commission in order to benefit from a particular exclusion or exemption. Ms Rose WEBB of the Commission added that the Commission would liaise further with the travel and tourism industry or the policy bureau on the related matters.

76. The Chairman enquired whether the malpractice of some small tour operators, such as setting a very low tour fee for the Mainland tourists and making money through forced shopping by their tourist guides, would be caught by the Ordinance. In reply to the Chairman's question, Ms Anna WU of the Commission advised that the Ordinance applied to anti-competitive conduct such as price fixing and bid-rigging. Other matters related to consumer protection or unfair trade practices might be subject to other ordinances.

*Employment salaries*

77. Mr Kenneth LEUNG enquired if agreements among accounting firms on the salary level of staff was a kind of price fixing conduct under the Ordinance. Ms Rose WEBB of the Commission responded that such conduct was potentially price fixing as the firms were competing for the accountants available in the market. In this connection, the Employers Federation of Hong Kong ("EFHK") was alerted of the need to exercise due care when discussing employment salaries. While benchmarking on some past practices was acceptable, an agreement on the actual salaries would fall within the scope of the Ordinance.

78. The Chairman considered that the matter in question was common in various industries, and wondered if it should fall under the enforcement areas of the Commission. In particular, he expressed doubts on whether the information provided by EFHK on the average salary adjustment or by the Pay Trend Survey Committee on civil service salary adjustments, which was always taken by SMEs for reference, was a kind of price fixing conduct.

79. Ms Anna WU of the Commission said that the Commission had maintained regular discussions with different industry associations on various matters, including the collection and sharing of information among industry members. If the salary information used for sharing and reference purpose was collected from the past and was in an anonymized format, such practices were generally not violating the Ordinance. However, an agreement on a specific price would be regarded as anti-competitive. In short, simply following a reference price publicly available was not a kind of cartel conduct, while a cartel offence would involve coordination of prices among various parties.

*Public education*

80. Noting that the Commission had produced a number of videos for public education purpose, Mr Kenneth LEUNG considered that information such as the structure and power of the Commission and the Competition Tribunal, and the detailed procedures for lodging complaints to the Commission should be clearly

spelt out. Ms Anna WU of the Commission responded that apart from videos, the corporate website of the Commission had contained detailed information about the Ordinance and the work of the Commission including the procedures for lodging complaints. It would continue to beef up the contents of the materials for public information.

81. Mr Kenneth LEUNG enquired if the Commission would consider setting up district offices in the territory to facilitate public enquiries. Ms Anna WU of the Commission said that different channels were available for the public to lodge complaints and/or raise enquires. The Commission would take a prudent approach in resource management, having regard to operational needs.

82. The Chairman remarked that representatives from the Commerce and Economic Development Bureau should participate in future discussion on issues relating to the Ordinance, including items led by the Commission. Both Mr Dennis KWOK and Mr Frankie YICK shared the Chairman's view.

*(Post-meeting note: The Administration's response was issued to Members vide LC Paper No. CB(4)293/15-16(01) on 2 December 2015.)*

### Conclusion

83. Summing up, the Chairman requested the Commission to take note of members' concerns raised at the meeting. He also expected that more issues would arise following the full commencement of the Ordinance. In response, Ms Anna WU of the Commission undertook to attend future Panel meetings to explain the subject matter further.

### **VIII. Any other business**

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