

立法會

Legislative Council

LC Paper No. CB(4)1577/20-21

(These minutes have been seen by
the Administration)

Ref : CB4/PL/EDEV

Panel on Economic Development

Minutes of meeting
held on Friday, 9 July 2021, at 10:45 am
in Conference Room 1 of the Legislative Council Complex

Members present : Hon Christopher CHEUNG Wah-fung, SBS, JP
(Chairman)
Hon Starry LEE Wai-king, SBS, JP
(Deputy Chairman)
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBM, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Steven HO Chun-yin, BBS, JP
Hon Frankie YICK Chi-ming, SBS, JP
Hon YIU Si-wing, SBS
Hon Elizabeth QUAT, BBS, JP
Ir Dr Hon LO Wai-kwok, GBS, MH, JP
Hon CHUNG Kwok-pan
Hon Jimmy NG Wing-ka, BBS, JP
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai, JP
Hon LUK Chung-hung, JP
Hon Tony TSE Wai-chuen, BBS, JP

Member absent : Dr Hon CHENG Chung-tai

Public Officers : Agenda item III
attending

Ms Leona LAW
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry) 2

Agenda item IV

Mr WONG Kam-sing, GBS, JP
Secretary for the Environment

Mrs Millie NG, JP
Deputy Secretary for the Environment

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

Mr Owin FUNG, JP
Deputy Director of Environmental Protection (3)

Mr CHAN Hon-bun
General Manager/Operations
Marine Department

**Related
organization**

: Agenda item III

Competition Commission

Mr Samuel CHAN, BBS, JP
Chairman

Mr Rasul BUTT
Chief Executive Officer

Ms Rita HO
Head (Corporate Communications)

Agenda item IV

Competition Commission

Mr Rasul BUTT
Chief Executive Officer

Ms Rita HO
Head (Corporate Communications)

Clerk in attendance : Ms Shirley CHAN
Chief Council Secretary (4)5

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

Ms Carol WONG
Council Secretary (4)5

Ms Zoe TONG
Legislative Assistant (4)5

Miss Mandy LUI
Clerical Assistant (4)5

Action

I. Information papers issued since the last regular meeting

(LC CB(4)1048/20-21(01)	Paper	No. — Tables and graphs showing the import and retail prices of major oil products from May 2019 to April 2021 provided by the Administration
----------------------------	-------	---

LC CB(4)1185/20-21(01)	Paper	No. — Tables and graphs showing the import and retail prices of major oil products from June 2019 to May 2021 provided by the Administration)
---------------------------	-------	---

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

II. Date of next meeting and items for discussion

(LC CB(4)1153/20-21(01)	Paper	No. — List of outstanding items for discussion
----------------------------	-------	--

LC CB(4)1153/20-21(02)	Paper	No. — List of follow-up actions)
---------------------------	-------	----------------------------------

2. The Chairman said that after considering the President's direction in respect of Legislative Council ("LegCo") meetings to be held from 21 July to 20 October 2021 as set out in LC Paper No. CB(3)618/20-21 and the Administration's views, the following regular Panel meetings would be arranged:

(a) Monday, 23 August 2021 at 10:45 am; and

(b) Monday, 27 September 2021 at 10:45 am.

3. Members raised no objection to the above arrangement. Members also noted that the Secretariat was arranging a visit to the Three-Runway System works area at Hong Kong International Airport.

(Post-meeting note: As the Administration had no proposed discussion items for the above meetings, the Chairman decided to cancel the meetings. Members were informed of the arrangement vide LC Paper Nos. CB(4)1369/20-21 and CB(4)1536/20-21 on 13 August and 16 September 2021.)

III. Report on the work of the Competition Commission

(LC Paper CB(4)1138/20-21(01)	No. — Paper provided by the Competition Commission
----------------------------------	---

LC Paper CB(4)1153/20-21(03)	No. — Updated background brief prepared by the Legislative Council Secretariat)
---------------------------------	--

Presentation by the Competition Commission

4. At the invitation of the Chairman, Mr Samuel CHAN, Chairman of the Competition Commission ("the Commission"), Mr Rasul BUTT, Chief Executive Officer, the Commission and Ms Rita HO, Head (Corporate Communications), the Commission briefed members on various aspects of the Commission's work since the last report made to the Panel in April 2020 and provided an outlook for the coming year. Details of the briefing were set out in the paper provided by the Commission (LC Paper No. CB(4)1138/20-21(01)).

Discussion

Investigations and Complaints

5. Noting that the Commission had received around 5 000 complaints and enquiries since the full commencement of the Competition Ordinance ("the Ordinance") in December 2015, Mr YIU Si-wing requested the Commission to set out separately the number of complaints and enquiries received and processed in each of the past years as well as the trend of such complaints and enquiries. Mr SHIU Ka-fai also made a similar request so that members could better understand the workload of the Commission.

6. Mr Rasul BUTT, the Commission replied that about 60% of the complaints and enquiries received by the Commission were on the First Conduct Rule ("FCR") with cartel conduct comprising the bulk. The Commission had received relatively more complaints and enquiries in relation to the real estate property management, IT and the transport and logistics sectors. The Chairman requested the Commission to provide a written response to members' request for information on details of complaints and enquiries received by the Commission.

(Post-meeting note: The Commission's response was issued to members vide LC Paper No. CB(4)1338/20-21(01) on 9 August 2021.)

7. Noting that among the 5 000 complaints and enquiries received by the Commission, over 220 complaints were assessed further, of which 19% had proceeded to in-depth investigation stage, Mr LUK Chung-hung and Mr SHIU Ka-fai enquired about the handling process of the remaining complaints and enquiries which did not proceed to in-depth investigation stage. They expressed concern about the low proportion of cases brought to the Competition Tribunal ("the Tribunal") among the total number of complaints and enquiries received by the Commission. Expressing a similar concern on the low number of cases brought to the Tribunal, Mr YIU Si-wing enquired about the total number of cases which would be brought to the Tribunal for judgments.

8. Mr Rasul BUTT, the Commission advised that majority of the 5 000 complaints and enquiries received by the Commission were enquiries which were handled immediately. All complaints and enquiries received were carefully considered and those which warranted further assessment were escalated to the initial assessment and/or investigation phase according to the Enforcement Policy. The Policy provided guidance on how the Commission should carry out its enforcement function in investigating possible contraventions. When considering whether to

investigate a particular case, the Commission would accord priority to cases with the strongest direct consumer impact and involved anti-competitive conducts of a serious nature, e.g. cartel conduct and abuse of substantial market power. During the investigation process, the Commission would also consider non-litigation remedies, including issuing infringement notices and accepting commitments to address and rectify its competition concerns where appropriate. It was therefore premature to conclude the number of cases to be brought to the Tribunal at this stage.

9. Mr Samuel CHAN, the Commission further advised that it would normally take three to five years to bring a case to court in other jurisdictions, such as the European Union and the United States of America. In Hong Kong, the Commission had successfully brought seven cases to the Tribunal since late 2015, which was not a low figure.

10. Noticing that starting from 2018-2019, there was a dedicated funding of about \$200 million to support the Commission's litigation work in the coming years, Mr YIU Si-wing asked whether the Commission could recover costs from the successful cases ruled by the Tribunal. Mr Rasul BUTT, the Commission replied that there was a distinction between pecuniary penalties and legal costs. In four of the five successful cases ruled by the Tribunal, the amount paid by respondents to the Treasury as pecuniary penalties and to the Commission as costs of proceedings were around \$14 million and \$5 million respectively. Recovery of the costs of proceedings alone could not fully cover the expenditure of the Commission in its litigation work.

11. Referring to the Commission's paper that the Commission had accepted commitments offered by three major online travel agents ("OTAs") which resulted in a complete abandonment of any wide parity clauses in their contracts with accommodation providers in Hong Kong, Mr YIU Si-wing sought clarification on the "wide parity clauses" and details of the public consultation on the commitments offered by OTAs.

12. Mr Rasul BUTT, the Commission explained that the commitments aimed to address the Commission's concerns about clauses in contracts between OTAs and accommodation providers that required the latter to always give OTAs the same or better terms as those they offered in all other sales channels, as regards room prices, room conditions and/or room availability. The Commission considered that these clauses might have the potential of contravening FCR. The acceptance of commitments would result in the complete removal of these clauses. The Commission had published guidance to the industry in respect of the Commission's concerns.

13. Referring to the Commission's paper that an information technology

("IT") company and its director contravened or was involved in the contravention of the Ordinance by exchanging future pricing information with its competitor in a bidding exercise, Mr Tony TSE considered that the Commission should proactively identify anti-competitive conduct in the IT sector to strengthen deterrence.

14. Pointing out that some large-scale securities firms had been promoting stock trading services by offering zero commission, the Chairman enquired if such a practice would violate the Second Conduct Rule ("SCR"). Mr Samuel CHAN, the Commission advised that without detailed information it would be difficult to conclude if the practice was violating SCR. The Commission would seriously consider all complaints it received in accordance with the Ordinance. Mr Rasul BUTT, the Commission explained that the Commission had received complaints and enquiries relating to the financial services industry but it was not a sector with the greatest number of complaints and enquiries.

15. Mr SHIU Ka-fai, and Mr CHUNG Kwok-pan said that the public had high hopes that the establishment of the Commission would bring an impact to the "rocket and feather effect" of auto-fuel prices in Hong Kong. Mr SHIU was dissatisfied that among the seven cases brought to the Tribunal by the Commission, there was not even one case related to auto-fuel prices. Mr CHUNG cast doubt on the deterrent effect of the judgements handed down by the Tribunal.

16. Mr Jeffery LAM was dissatisfied that the situation of high auto-fuel prices in Hong Kong had no improvement since the establishment of the Commission in 2015. He called on the Commission to conduct an investigation on the "rocket and feather effect" of auto-fuel prices in Hong Kong.

17. The Deputy Chairman considered that the Commission might fall short of the public's expectations as it did not bring significant impact on any industries since its establishment and the judgements handed down by the Tribunal might not have sufficient deterrent effect. She suggested the Commission proactively look into the potential anti-competitive practices of certain industries by conducting investigations and strengthen public awareness of the Ordinance through advocacy.

18. Mr Samuel CHAN, the Commission stressed that the Commission was fully aware of the public concern over auto-fuel prices and had been closely monitoring the issue. He said that the Commission was aware of the impact of high auto-fuel prices on consumers and drivers in Hong Kong. The prices of auto-fuel products were affected by various factors, such as external economic environment and related government policies. The

mere existence of parallel pricing or the situation of two competitors in the market having the same or similar prices for a product could not be taken as hard evidence of price-fixing, whether in Hong Kong or other jurisdictions.

19. Mr Rasul BUTT, the Commission advised that the "Report on Study into Hong Kong's Auto-fuel Market" identified a number of structural and behavioral features of the market which the Commission believed to be hindering competition and contributing to high auto-fuel prices in Hong Kong. The Commission would not hesitate to conduct investigations if it had reasonable cause to believe that there was anti-competition conduct in the auto-fuel market. Given that matters relating to investigation should generally be kept confidential, he could not disclose more details in this connection.

Advocacy and policy advisory

20. Mr Tony TSE enquired about the Commission's initiatives to increase public awareness of bid-rigging in various industries, especially in the property management industry. Ms Rita HO, the Commission replied that the Commission had been working with trade associations of the procurement and property management industries to invite their members to attend the Commission's seminars on how to combat bid-rigging. The Commission also spoke at briefings on building renovation and management organized by the Home Affairs Department targeting property owners and building management companies across 18 districts. As suggested by Mr TSE, the Commission would approach the Property Management Services Authority for potential cooperation opportunities. Mr Rasul BUTT, the Commission supplemented that the Commission had recently had a meeting with the Property Management Services Authority to see the possibility of adding competition clauses to their proposed code of practice for the property management industry.

21. In response to Mr CHUNG Kwok-pan's enquiry about the webinar series mentioned in the Commission's paper, Mr Samuel CHAN, the Commission advised that to facilitate the development of competition law expertise amongst the local legal community, the Commission had organized seminars and workshops for lawyers with limited or no competition law expertise which was very well-received. The Commission would continue its work in this regard.

22. In response to Mr CHUNG Kwok-pan's enquiry about the effectiveness of director disqualification order, Mr Samuel CHAN, the Commission said that based on the Commission's enforcement experience, individual liability or director disqualification order was an enforcement outcome that many respondents were very concerned about. It was an

important enforcement tool for both the Commission and overseas competition authorities.

23. In response to Mr LUK Chung-hung's enquiry about whether the Commission had enough powers on investigation and information gathering, Mr Samuel CHAN, the Commission said that the Commission currently had enough investigative powers under the Ordinance which were on par with those possessed by competition authorities in other jurisdictions.

24. Mr LUK Chung-hung enquired whether the Commission had conducted any investigation on the Government's tendering procedure for selecting consultancy services for large-scale public infrastructure projects or received any competition-related complaints in this regard. He suggested that the Commission should offer more advice to the Government in this aspect to ensure effective use of public money.

25. Mr Rasul BUTT, the Commission replied that while it was inappropriate for the Commission to disclose the content of its advice to the Government, the Commission had continued to liaise closely with Government bureaux/departments and provided advice on competition matters, in particular during the preliminary stage of policy formulation.

26. In response to Mr Tony TSE's enquiry about the progress of reviewing the Ordinance so as to introduce a mechanism of initiating private actions, Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry)² advised that the Competition Bill introduced by the Government into the LegCo in 2010 contained provisions which allowed stand-alone private actions. However, during the scrutiny of the Bill, small and medium enterprises ("SMEs") expressed concern that stand-alone private actions might be abused by large enterprises to oppress SMEs. In view of such concern, the Administration removed the relevant provisions. The Administration maintained close contact with the Commission to monitor the implementation of the Ordinance and would review the effectiveness of the Ordinance at an appropriate juncture.

27. In conclusion, the Chairman requested the Administration and the Commission to take note of members' views and concerns.

IV. Auto-fuel prices in Hong Kong

(LC Paper No. — Paper provided by the
CB(4)1138/20-21(02) Administration

LC Paper No. — Updated background brief
CB(4)1186/20-21(01) prepared by the
Legislative Council
Secretariat)

Presentation by the Administration

28. At the invitation of the Chairman, Secretary for the Environment ("SEN") briefed members on the results of the Government's review of the local auto-fuel market and related follow-up work. Details of the briefing were set out in the paper provided by the Administration (LC Paper No. CB(4)1138/20-21(02)).

Discussion

Retail prices of auto-fuel products and competition in auto-fuel market

29. Members expressed grave concern about the persistent "quick going up, slow coming down" situation of auto-fuel prices in Hong Kong. Ir Dr LO Wai-kwok, Mr Steven HO and Mr SHIU Ka-fai said that it was understandable that oil companies had to bear various operating costs, but compared with neighboring jurisdictions, members of the public in Hong Kong were paying the highest prices in auto-fuels in the world and the discount provided by oil companies was just a sop to attract customers. To assess the reasonableness of the local retail prices of auto-fuels determined by oil companies, Ir Dr LO requested the Administration to conduct a detailed analysis on the various costs of oil companies including operating expenditure and discounts offered by oil companies.

(*Post-meeting note:* The Administration's response was issued to members vide LC Paper No. CB(4)1347/20-21(01) on 10 August 2021.)

30. Mr Frankie YICK agreed that a cost analysis of auto-fuel products should be conducted by the Administration to facilitate members' consideration. He called on the Administration to monitor the price setting of auto-fuel products and reiterated his suggestion of requiring oil companies to adopt a pricing formula for auto-fuel products by making reference to the pricing formula for liquefied petroleum gas ("LPG") at dedicated auto-LPG filling stations.

31. Mr LUK Chung-hung requested the Administration to provide information on the discounts offered by oil companies. He said that although the Administration had commissioned the Consumer Council ("CC") to launch the "Oil Price Watch" for consumers to obtain discount information of auto-fuel products, the transparency of prices of auto-fuel products still had room for improvement. As some oil companies might only provide special discounts to their members or offer discounts to designated credit card holders, it would be difficult for consumers to capture all discount information before refueling their vehicles.

32. Mr Steven HO pointed out that the situation of "quick going up, slow coming down" also existed in vessel fuel prices which had increased the financial burden of fishermen and marine practitioners. He urged the Administration to closely monitor the retail prices of auto-fuels and fuels for vessels in Hong Kong.

33. Deputy Secretary for the Environment ("DSEN") advised that all auto-fuels sold locally were imported refined oil products. In a free-market economy, retail prices of auto-fuels in Hong Kong were determined by oil companies having regard to commercial principles and their operating costs. The role of the Government was to ensure a stable fuel supply, maintain an open market and remove barriers to market entry, and at the same time improve the transparency of prices of auto-fuel products. The Administration had been monitoring the changes in local retail prices of auto-fuels and comparing them with the trend movements of international oil prices. It was noticed that the increases in both the import and retail prices of unleaded petrol were generally in line over the past year, although the timing of changes might not be exactly the same.

34. SEN said that the Administration recognized the importance to enhance the transparency of prices of auto-fuel products. While promoting electric vehicles ("EVs"), the Administration did not overlook the need of drivers of petrol vehicles and had therefore commissioned CC to launch the new "Oil Price Watch" website and mobile application for consumers to compare the retail prices of auto-fuel products among different retailers. According to a rough estimate, if drivers using unleaded petrol and diesel used the information provided by the "Oil Price Watch", they could enjoy 15% and 17% discount on their respective average pump prices. Recently, CC had conducted a user opinion survey on the "Oil Price Watch". The survey found that more than 70% of the respondents had the habit of switching oil companies for fueling up in order to seek cheaper prices.

35. DSEN supplemented that the "Oil Price Watch" would update retail prices of auto-fuel products after discounts for all petrol filling stations

("PFSs") of different oil companies daily. The Administration noticed that since the launch of the "Oil Price Watch", oil companies were more proactive in offering discounts. On the other hand, members of the public were encouraged to switch to EVs which they could save at least 80% monthly when comparing with the expenses for auto-fuel products.

36. Mr Frankie YICK was dissatisfied with the Administration's response. He opined that it was unrealistic and a waste of time for private vehicle owners/drivers to check the "Oil Price Watch" daily and travel to other districts to refuel their vehicles. He also doubted the feasibility of promoting EVs among commercial vehicle owners and public transport practitioners, and expressed concern that the high auto-fuel prices might create a niche for illegal fuel activities.

37. The Deputy Chairman and Mr Tony TSE considered that the Administration was not putting sufficient efforts in monitoring the auto-fuel prices as no breakthroughs could be seen in these years in auto-fuel prices. The Deputy Chairman opined that the "Oil Price Watch" was a temporary measure and should not be regarded as a solution to the fundamental problem of high auto-fuel prices, which was a competition-related issue.

38. Mr Steven HO and Mr YIU Si-wing expressed similar views that the "Oil Price Watch" could not solve the problem of high auto-fuel prices. Mr HO said that the Administration should not use "Oil Price Watch" to conceal the "quick going up, slow coming down" situation of auto-fuel prices. To solve the problem at root, Mr YIU requested the Commission to conduct investigations on "quick going up, slow coming down" situation of the auto-fuel prices in Hong Kong.

39. Mr SHIU Ka-fai was dissatisfied that the Commission did not have further follow-up action after the release of the Report in 2015. He considered that auto-fuel prices were always maintained at a high degree of conformity among oil companies might reflect that there was a lack of competition in the auto-fuel market. Noting that it was the Administration's plan to cease the new registration of fuel-propelled private cars by 2035, he urged the Administration not to neglect the problem of high auto-fuel prices in promoting EVs.

40. Mr Rasul BUTT, the Commission advised that the Report, published in May 2017, looked into the auto-fuel prices and costs from 2012 to 2015. He understood that CC had conducted a study on auto-fuel prices recently which had also looked into the "quick going up, slow coming down" situation of auto-fuel prices.

41. Mr Holden CHOW said that although he agreed with the direction of the Administration in promoting EVs to combat climate change,

members of the public would still suffer from high auto-fuel prices in the transition from petrol vehicles to EVs. As auto-fuel products were necessities for some households who lived remotely, the Administration should not just sit on the sidelines but should take proactive measures to address the situation of high auto-fuel prices.

42. In response to the Deputy Chairman's comment that the Administration should adopt a new way of thinking in dealing with the problem of auto-fuel prices in Hong Kong, SEN replied that the Administration would review the situation holistically with due consideration of combating climate change, popularization of EVs and the economy of Hong Kong. The Administration, together with CC, would continue to enhance the transparency of auto-fuel prices and promote competition.

Electric vehicles

43. Noticing that the demand for auto-fuels might decrease with the popularization of EVs, Mr Tony TSE enquired about the Administration's future arrangement of PFSs, in particular whether PFSs would be allowed to install charging facilities to serve EVs. He was also worried that the prices of auto-fuel products might rise due to a declining demand, which might bring a negative impact to owners of petrol vehicles.

44. DSEN replied that it was the general consensus of the international community to increase the use of clean energy to combat climate change. During the process of low carbon transition, many overseas places had imposed carbon taxes in recent years, and some places had also increased fuel taxes as a means to reduce the use of fossil fuels gradually. Considering the rapid development and popularization of EVs would reduce the demand for refuelling of petrol vehicles gradually in the long run, the Administration would review the future tendering arrangement of PFSs, meanwhile ensuring a stable supply of auto-fuel products.

45. Deputy Director of Environmental Protection (3) ("DDEP3") advised that exploring the feasibility to convert PFSs to charging stations was one of the medium-to-long term initiatives in the "Hong Kong Roadmap on Popularisation of Electric Vehicles". The Administration was exploring to first convert those PFSs with their land leases to be expired. The Administration would take a prudent approach in the conversion, so as to take due consideration of relevant issues including land use, number and locations of the sites to be converted, price of electricity and impact on petrol vehicles.

46. In response to Mr YIU Si-wing's enquiry about the progress of setting up charging stations across the territory, DDEP3 advised that it was the Administration's target to have at least 150 000 parking spaces in private residential and commercial buildings equipped with EV charging infrastructure before 2025. To encourage the installation of charging infrastructure in new private buildings, the Government tightened the arrangement of gross floor area concessions in 2011 to encourage installation of EV charging infrastructure in car parks of new developments. About 68 000 parking spaces equipped with charging infrastructure had been approved for concessions. The Government also launched the EV-charging at Home Subsidy Scheme in October 2020 to subsidize the installation of charging infrastructure in car parks of existing private residential buildings. More than 440 applications received in eight months after its launch, covering nearly 100 000 parking spaces. Apart from charging at home and offices, the Administration targeted to have more than 5 000 public chargers by 2025.

V. Any other business

47. There being no other business, the meeting ended at 12:46 pm.

Council Business Division 4
Legislative Council Secretariat
27 September 2021