Legco this week launched what is set for the coming two years to be one of the more entertaining soap operas in town – the Bills Committee to scrutinize the Government's planned Competition Law paragraph by paragraph.

With 40 members, it surely must be one of the biggest ever Bills Committees. With meetings scheduled fortnightly up to March 2012, it is set to provide a steady flow of drama – party political posturing that will intensify as our lusty politicians come steady closer to their 2012 Legco elections. The futures of several politicians and all key parties may hinge on how successful they are in demonstrating their anti-monopoly credentials to their voters. Hong Kong's big companies – the traditional targets of anti-monopoly scrutiny – can expect a bumpy ride, and some waspish attacks.

The more I watch, the more a sense of angst rises in me. As the Bills Committee Soap Opera gathers momentum, so consumer expectations on what our future Competition Commission can expect to achieve will steadily rise. But experience from across the world seems to show that Competition Authorities examine rather few cases every year, that most of these involve scrutiny of proposed mergers (which in theory should be outside the remit of our own Competition Commission), that many fail, and that on average they cost taxpayers an awful lot of money. The only clear beneficiaries are lawyers – a point well made by an Australian competition lawyer recently when he noted that the average competition case in Australia ends up costing in the region of HK$1 billion. Ouch. Expectations are being set unsustainably high, and there is ignorance of the substantial costs we will have to bear as taxpayers.

The UK's competition authority cost US$95 million in the financial year that ended in March 2010. It employs 600 full time staff, and completed a grand total of five new cases

last year. Australia's competition authority cost US$143 million, with 660 full time staff and 11 cases completed. For the US, the cost was US$125 million, with 530 staff and seven completed cases. One shining exception appears to be Singapore, which employs just 52 people in its competition authority, and cost just US$9 million, with a completed case load of 16 cases.

Of course, we are far from knowing how many staff our own Competition Commission will employ, or what budget it will need – but if the EU model at the heart of our proposed Competition Law is any guide, we are likely to be looking at costs closer to those of the UK than Singapore. The Government's own forecast of HKS67 million, and 11 new jobs is almost mischievously preposterous – look by comparison at its forecast cost for the proposed (and much less complex) Insurance Authority – HK$240 million, and 237 staff – and the Government's innumeracy seems literally incredible.

This raises for me a single pregnant question: where is the "Regulatory Impact Assessment"? For years now, we have taken it for granted that any proposed infrastructure project or development plan will be subject to a rigorous Environmental Impact Assessment, or EIA. Most developers grumble about them, because they cost so much money, and because they add two years – sometimes three – to the time needed to complete a project. But the necessity is grudgingly accepted, and it is arguable that many projects are improved as a result of the process.

So why do we not insist on the same rigorous scrutiny of new regulations – in effect, Regulatory Impact Assessments, or RIAs? As part of our overall drafting of a Competition Law, surely there should be a senior and powerful "reality check" person

inside Government whose job it is to undertake a solid cost-benefit analysis of introducing a law, or specific provisions in it.

We all accept that honest, even-handed regulation of business activity is essential, whether it applies to the stock market, or banking services, or food safety standards – but there seems to be scant recognition on the part of Governments that are drafting regulations, or Legislators that are approving them, that regulation costs money – sometimes awfully large amounts of it – both for taxpayers, and for companies, whether they are ever subject to a Competition investigation or not.

As it becomes clearer by the week that the Government is bent on building a blunderbuss Competition Law that seems modeled on the cumbersome and fiercely contentious model built in Europe, so the need seems obvious for a "reality check" person to get to work.

Of course, this is not just a concern in the Competition Law, but in all areas of Government regulation – existing or proposed. Many in business complain today that government regulation is increasingly politicized, adopted in response to piecemeal pressures from different groups in the community. While there is often merit in considering new or more rigorous regulation, surely there is a parallel need to do a cost-benefit review? Government and Legislators at present seem to believe either that there is no cost associated with new regulation, or that any cost can and should be borne by business. The first assumption – that there is no cost – is sadly naïve. The second assumption – that companies can and should pay – might be fair – but this is surely a judgment that can only be made after the Regulatory Impact Assessment has been

undertaken. Perhaps this is one of the questions that Bills Committee members should raise, as our epic Legco Soap Opera begins.

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