

**Motion on “Vigorously promoting healthy market competition  
to counteract the market dominance of Link REIT”  
moved by Hon YUNG Hoi-yan  
at the Legislative Council Meeting of 23 November 2016**

**Progress Report**

At the Legislative Council meeting of 23 November 2016, the motion on “Vigorously promoting healthy market competition to counteract the market dominance of Link REIT” moved by Hon YUNG Hoi-yan and amended by Hon Andrew WAN was carried. Wording of the motion is at **Annex**. At the meeting, the Secretary for Food and Health and the Secretary for Transport and Housing have made their responses to the major issues raised. We now report the work progress of the Food and Health Bureau (FHB), the Transport and Housing Bureau, the Housing Authority (HA), the Commerce and Economic Development Bureau and the Home Affairs Department.

**Background**

2. In 2005, HA divested 180 properties, including retail and car-parking facilities, through Link REIT (Link) (formerly called “The Link”). This enables HA to focus on its core function of providing subsidised public housing and improves HA’s financial position in the short-to-medium term with proceeds from divestment. Also, the efficiency of the commercial facilities would be enhanced under the operation of a private entity in accordance with commercial principles.

3. HA is empowered by section 4 of the Housing Ordinance to exercise a wide range of functions. It is necessary for HA to constantly examine and prioritise its duties by striking a balance among various considerations such as resources constraints, cost-effectiveness and the community’s expectations. In 2005, the Court of Final Appeal ruled that the divestment by HA of its retail and car-parking facilities was consistent with HA’s object as laid down in section 4(1) of the Housing Ordinance. The provision of retail and car-parking facilities by HA did not mean that HA had to be the direct provider itself, but HA secured the provision of such facilities so long as such facilities were available, even though they were not provided by HA but by a third party.

## **Link's Operation**

4. Link has been a private entity ever since its listing in 2005. The Government and HA do not hold any shares of Link. The business direction and day-to-day operation of Link is entirely independent of the Government and HA. As with any other private property owner, Link must comply with relevant legislation and land lease conditions. The assignment deeds between HA and Link also contain certain restrictive covenants. As long as the relevant statutory requirements and land lease conditions are complied with, the Government cannot interfere with the owners' lawful right to use their properties. Likewise, as long as Link does not breach the aforementioned covenants with HA, HA cannot and will not interfere with its day-to-day operation and commercial decisions, including renovating its shopping arcades, selling its shopping arcades and car parks, leasing arrangements of car parks, etc.

5. With respect to land lease restrictions, conditions in the land leases stipulate the land uses of the relevant lots. If an owner wishes to change the relevant land uses, he needs to obtain prior agreement from other owners of the lots (including HA and owners of the residential flats) and approval by the Lands Department (LandsD). The specific conditions in the land leases vary case by case. Generally speaking, land leases contain provisions stipulating that the car-parking spaces are restricted to the parking of vehicles by the residents and visitors of the lot concerned, and individual land leases also stipulate that some parking spaces shall be provided for the parking of vehicles by the residents and visitors of other specified lots, unlike public car parks. The restrictive covenants between HA and Link stipulate that, under specific circumstances, the commercial retail spaces and car-parking facilities shall not be disposed of except as a whole. As long as HA still holds any proprietary interest in the estate or court concerned, the restriction that the commercial facilities shall not be disposed of, except as a whole, remains effective. If HA holds all residential units in the estate or court concerned, the restriction that the car-parking facilities shall not be disposed of, except as a whole, will remain effective. The covenants also require the owners concerned to let out certain designated commercial units to non-profit-making organisations nominated by Education Bureau, Social Welfare Department or other designated institutions at concessionary rent or 50% of market rent as assessed by HA for operating education, welfare or community facilities.

6. If Link is in breach of any legislation, land lease conditions or the covenants between Link and HA, the relevant Government departments and HA will certainly take appropriate actions and hold it accountable.

**Requesting the Competition Commission to expeditiously investigate whether Link has violated the requirements of the Competition Ordinance**

7. The Commerce and Economic Development Bureau has reflected the concerns of Members to the Competition Commission (Commission). As pointed out at the meeting on 23 November 2016, the Commission, being an independent statutory body set up under the Competition Ordinance, will decide whether or not to pursue a case having regard to the considerations stipulated in its Guideline on Investigations. In order to effectively conduct investigations and protect the interests of all parties, the Commission will not comment on whether it will investigate into a particular institution or enterprise, nor will it publicise any reports on completed investigations.

**The Setting up of Temporary Bazaars**

8. The Government adopts a positive attitude towards specific proposals for organising bazaars of a temporary nature<sup>1</sup>. As long as they will not compromise public order and safety, food safety and environmental hygiene and obstruct public passageways, when suitable sites have been identified by the organisations concerned and that support from local communities and respective district councils (“DCs”) have been obtained, the Government will facilitate liaison with relevant bureaux and departments.

9. In fact, since March 2015, support from DCs have been obtained for a number of bazaar proposals. For example:

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<sup>1</sup> Bazaars involve buying and selling goods, but their venues are not permanent and their operation is non-recurrent and of short duration. Sites held by the Government have in general their long-term designated uses for serving the public and relevant stakeholders. If bazaars involve the regular use of Government sites, relevant departments must carefully assess whether the use would contradict the originally designated use and the impact on service users and relevant stakeholders.

- (a) In Sham Shui Po District, with the support of the DC:
- Temporary bazaar activities have been organized twice in Kiu Kiang Street and once in Maple Street since the summer of 2015.
  - Since the Lunar New Year in 2016, lunar new year bazaars (including cooked food stalls) have been organized in Maple Street Playground. In 2017, apart from the one in Maple Street Playground, lunar new year bazaar activities (including cooked food stalls) were also organized in the junction of Tung Chau Street and Yen Chow Street (near the area under the West Kowloon Flyover).
  - During the Easter Holidays in 2017, a two-day festive bazaar (including cooked food stalls using naked flame) were organized in Kiu Kiang Street.
- (b) In the Islands District, the DC has set up a working group on promotion of bazaar development:
- At the meeting of 16 June 2016, in-principle agreement was obtained for short-term bazaar proposals proposed by four community organisations. Proposed sites of organizing bazaars include Peng Chau and Tung Chung. As of now, two organisations have organized bazaars.
  - At the meeting of 21 November 2016, the proposal to organize bazaars in Tung Chung on 11 February 2017 was endorsed.
- (c) In North District:
- On 19 September 2016, the relevant committee of the DC passed a motion to organize bazaars at Tin Kwong Hui, Shek Wu Hui, Sheung Shui.
  - The relevant working group and the DC have discussed the consultancy report on the provision of bazaars in North District

on 16 January 2017 and 9 February 2017 respectively. The consultancy report recommended five sites for organizing bazaars.

(d) In Yuen Long District:

- A proposal to organize short-term bazaars at the Amphitheatre of Tin Yiu Estate proposed by a community organization was respectively discussed at the Area Committee meeting of 13 February 2017 and the Culture, Recreation, Community Service and Housing Committee meeting of 7 March 2017.

10. Regarding individual proposals of setting up bazaars in open areas in public housing estates, HA will consider the needs and circumstances of the estates concerned, in accordance with the Government's policy and established arrangement on the setting up of bazaars. At the same time, HA has to carefully examine the impact of such proposals on individual estates in the light of the actual circumstances.

11. From time to time, the Housing Department receives applications from community groups for holding various activities in housing estates under HA. Interested groups may submit their application to the respective estate management office, provided that such activities are non-commercial. The management office will examine the application in accordance with the established procedures and requirements. In addition, venues in designated shopping arcades and estates under HA are also available for letting for a fee for short-term promotional and sales activities.

12. Given the generally crowded environment in public rental housing (PRH) estates, open areas on the ground level are often used for public passageways, sitting-out areas or public spaces for residents' use. If these open areas are to be used as bazaars, we need to consider their impact on the housing estates, such as environmental hygiene problems, obstruction of public passageways, disturbance to residents or the risk of drawing in illegal hawkers. We are of the view that the feasibility of setting up temporary bazaars in crowded PRH estates should be carefully studied with regard to various factors, including:

- (a) some PRH estates are locating on lots subject to land leases with restrictions on the total floor area for commercial facilities. If the maximum total floor area is exceeded, an application to LandsD for approval is required and payment of premium may be necessary;
- (b) consent has to be obtained from other owners for setting up bazaars in common areas of PRH estates. Views of residents, other stakeholders and the local communities on the change in use of common areas should also be thoroughly considered;
- (c) HA's established policy and on-going efforts of prohibiting hawking activities in PRH estates to minimise disturbance to residents;
- (d) ensuring that public and emergency passageways must not be obstructed; and
- (e) the goods for sale, in particular fresh food, must meet standards of food safety and environmental hygiene.

13. HA will support of FHB's policy and operational arrangements on the setting up of bazaars, and will explore relevant proposals with open mind subject to the aforesaid considerations.

### **“Hong Kong Planning Standards and Guidelines”**

14. FHB conducted a policy review on public markets in 2007-2008, which concluded that the future provision of new public markets should be considered on a case-by-case basis to ensure efficient use of public resources. Apart from the population of the area in question, other relevant factors that should be considered include the demographic mix, community needs, the presence of markets facilities nearby, the number of fresh provision retail outlets available in the vicinity, and public sentiment towards the preservation of hawker areas in the particular locality. The Government consulted the Panel on Food Safety and Environmental Hygiene of the Legislative Council and all District Councils on the review findings in 2008. As a result of the policy review conducted by the FHB, those parts concerning public markets in Chapter 6 of the Hong Kong Planning Standards and Guidelines (HKPSG) (which deals with retail facilities) were amended in April 2009 and have

remained in force since then. The revised HKPSG is based on a more holistic consideration of above relevant factors, rather than just the size of the population, in the planning of public markets. When preparing or reviewing town plans, the Planning Department will consult the relevant Policy Bureaux and departments, so as to ascertain whether there is a need to reserve land for public markets. We will, in the light of social developments and the actual situation on the ground, assess the need to review the planning guidelines for public markets as and when appropriate.

### **Public Markets**

15. As announced in the Policy Address in January 2017, the Government will build sizable public markets in new development areas (NDAs) and has initially identified suitable sites in the Tung Chung New Town Extension Area and Hung Shui Kiu NDA. The Government will continue to identify suitable sites in other NDAs. We hope that the two new strategically located public markets can be developed into large-scale markets in their respective regions. In other words, the markets are intended to serve not only Tung Chung New Town Extension Area and Hung Shui Kiu NDA but also the whole Tung Chung and Tin Shui Wai areas.

16. In addition, we will continue to enhance the hardware of a number of existing public markets, including reprovisioning, reconfiguration and upgrading of facilities, etc. We will also take forward progressively the installation of air-conditioning in public markets which have obtained overwhelming support from tenants (totalling 11 markets at present). We will endeavour to deliver hardware and management enhancement in parallel with a view to revitalising and modernising the operation and management of markets, so as to ensure that the enhancement measures are sustainable.

### **District Administration**

17. District administration is an integral part of the governance of the HKSAR Government. The Administration conducts reviews on the model of district administration from time to time to ensure that services and facilities provided at district level are responsive to community needs and encourage active civic participation.

18. DCs are the key partners of the Government in district administration. In order to provide district facilities that can satisfy the needs of the community, the Government consults DCs on matters related to the provision, use and management of district facilities so that local views can be taken into account.

19. The planning, construction and management of district facilities generally involves various government departments. Where necessary, District Officers will take up the coordination role and maintain close liaison with government departments and stakeholders to reflect the views of DCs and local personalities.

**Food and Health Bureau**  
**Transport and Housing Bureau**  
**May 2017**



**Motion on  
“Vigorously promoting healthy market competition to counteract  
the market dominance of Link REIT”  
moved by Hon YUNG Hoi-yan  
at the Council meeting of 23 November 2016**

**Motion as amended by Hon Andrew WAN**

That, since the establishment of The Link Real Estate Investment Trust (now known as Link Real Estate Investment Trust (‘Link REIT’)) in 2005, it has been criticized by society for ignoring the affordability and living necessities of grass-roots people, and rendering the Hong Kong Housing Authority unable to meet the requirements of the Housing Ordinance to provide necessary services to residents of its housing estates; Link REIT has arbitrarily renovated shopping arcades and significantly raised shop rentals as well as divested car parks and introduced monthly floating parking spaces, etc. in pursuit of maximum return on profits; in order to respond to public aspirations on counteracting the market dominance of Link REIT and improving community facilities, this Council urges the Government to:

- (1) request the Competition Commission to expeditiously investigate whether Link REIT has violated the requirements of the Competition Ordinance, and to submit an investigation report to the Legislative Council;
- (2) set up temporary bazaars at suitable locations in various districts to provide residents with choices other than those markets and shopping arcades under Link REIT;
- (3) revoke the amendments to the planning standard for public markets in the Hong Kong Planning Standards and Guidelines made by the Planning Department in 2009, and immediately implement the standard of providing one public market stall for every 55 to 65 households or approximately 40 to 45 stalls per 10 000 persons, so as to provide sufficient public markets for the 18 districts of Hong Kong, and consider

inviting social enterprises to operate under an approach that is innovative and can satisfy the needs of communities, thereby providing grass-roots people with more choices; the Government should also build new municipal services complexes in the vicinity of Link REIT's facilities in various districts and improve the facilities of existing municipal services buildings, so as to provide residents with community facilities such as parking spaces, cultural and recreational facilities and nurseries, etc., and increase their competitiveness against Link REIT;

- (4) comprehensively review the existing district administration models to enhance administrative efficiency, and ensure that community facilities can satisfy the needs of residents to improve their standard of living; and
- (5) request Link REIT to stop divesting shopping arcades and car parks, and to cancel the introduction of monthly floating parking spaces.