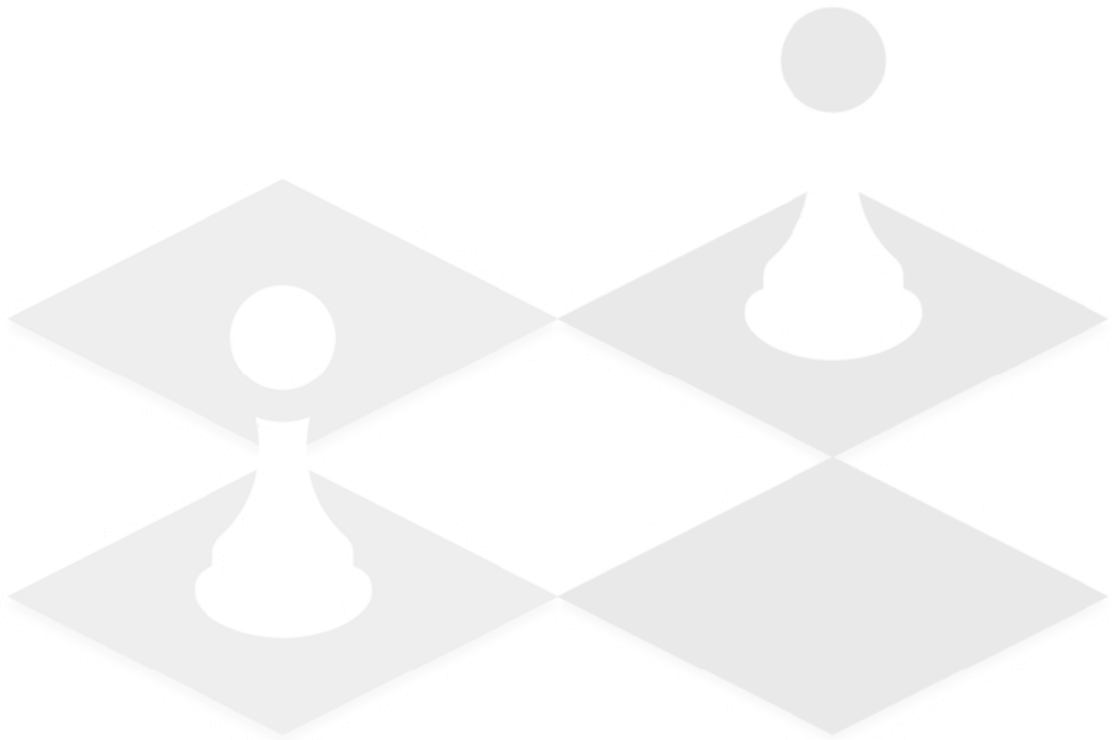


Fees Payable for Making an Application to the Competition Commission



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This notice outlines the fees charged by the Competition Commission¹ for applications for a Decision under Sections 9 and 24 (Exclusions and Exemptions) and Section 15 (Block Exemption Orders) of the Competition Ordinance. It also provides information about how the Commission proposes to consider requests to waive or reduce fees and the circumstances in which a fee will be refunded.

Fees payable for applications under the Competition Ordinance

Pursuant to the Competition (Fees) Regulation the following fees are to be paid to the Commission at the time an application is made:

Type of Application	Fee
Application for a Decision as to whether or not the First Conduct Rule is excluded on the ground of enhancing overall economic efficiency	\$100,000
Application for a Decision as to whether or not the First Conduct Rule is excluded or exempted on any other available grounds	\$50,000
Application for a Decision as to whether or not the Second Conduct Rule is excluded or exempted on any available grounds	\$50,000
Application for a Block Exemption Order	\$500,000

Further details about the available exemptions and exclusions are provided in the Commission's *Guideline on the First Conduct Rule*, *Guideline on the Second Conduct Rule* and *Guideline on Applications for a Decision under Sections 9 and 24 (Exclusions and Exemptions) and Section 15 Block Exemption Order* (available at www.compcomm.hk).

The fee is payable for each application made to the Commission. Where one application relies on two or more grounds for exemption or exclusion, a fee is payable for each ground. However, applications for two or more of the grounds in Sections 2 to 6 of Schedule 1 of the Ordinance are treated as one application.

¹ References to the Commission in this note are not references to the Communications Authority.

Fees must be paid at the time the application is made. As set out in Parts 6 and 11 of the *Guideline on Applications for a Decision under Sections 9 and 24 (Exclusions and Exemptions) and Section 15 Block Exemption Order*, the Commission encourages all potential applicants to contact the Commission prior to making their application. In addition to allowing the Commission and the applicant to consider whether an application is required, prepare for the process of application and identify key issues, this prior consultation will be an opportunity to confirm the applicable fee and discuss whether there are circumstances which could form the basis of a request for a waiver or reduction.

Waiver or reduction of fees

Section 3(3) of the Competition (Fees) Regulation provides that the Commission may in its discretion waive or reduce a fee payable or paid to the Commission in a particular case.

As the fees have been set to enable the Commission to recover the costs it incurs considering applications, the waiver or reduction of fees will be considered only on an exceptional basis.

Requests for waiver or reduction of fees should be made prior to making an application. The request should be made in writing and must include information about the proposed application and the reasons for requesting a waiver or reduction.

The Commission will consider the following factors in deciding whether to waive or reduce the fee payable:

1. Whether having regard to the applicant's financial position, and the size and scope of its operations, the payment of the fee would cause financial hardship?
2. If the applicant is a trade association, whether it would be possible for each of its members to contribute to the fee?

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3. If the applicant is only one party to an agreement, whether the other parties could contribute to the fee?
4. Would the consideration of the application by the Commission provide a benefit to such a wide range of persons or sectors of the economy that a waiver or reduction is justified? For example, would the Commission likely have issued a block exemption order in respect of the category of agreements of its own volition?
5. What are the anticipated costs to the Commission in considering the application?

The Commission will advise the proposed applicant in writing within 7 days whether the fee will be waived or reduced.

Refund of fees

Decline to consider application for a Decision

The Commission must refund a fee if it declines to consider an application for a Decision. The Competition Ordinance provides that the Commission is only required to consider an application for a Decision if:

- The application poses novel or unresolved questions of wider importance or public interest in relation to the application of exclusions or exemptions;
- The application raises a question of an exclusion or exemption for which there is no clarification in existing case law or decisions of the Commission; and
- It is possible to make a Decision on the basis of the information provided.

The Commission is not required to consider an application for a Decision if the application concerns hypothetical questions or conduct.

If the Commission declines to consider an application for a Decision it will provide an explanation of this outcome to the applicant in writing and at the same time refund any fee paid.

Transfer to the Communications Authority

If the Commission transfers an application to the Communications Authority, it will refund any fee paid to it and a fee will become payable as if the application was made to the Communications Authority in accordance with the Competition (Fees) Regulation.

Actual costs are less than fee paid

If at the end of its consideration of an application the Commission's actual costs incurred are less than that of any fee paid, the Commission will make a refund of the remaining amount to the applicant. Should an applicant withdraw an application during the course of the Commission's consideration, and the Commission's actual costs to that point are less than the fee paid, the Commission will make a refund of the remaining amount.

The actual costs incurred by the Commission will be recorded having regard to both the internal staff and related costs of the Commission and any other costs incurred such as engaging external experts. The Commission has an absolute discretion to determine what costs it is appropriate to incur in relation to an application.

No refund if application is not successful

The Commission will not refund a fee merely because, after consideration of an application, it has decided that the agreement or conduct under consideration is not excluded or exempted from the relevant conduct rules, or because it has not been satisfied that a Block Exemption Order should be issued.

As the fees have been set to enable the Commission to recover the costs it incurs considering applications, the waiver, reduction or refund of fees is not related to whether the Commission makes a decision in the applicant's favour.

Payment of fees

All applications and any requests for a fee waiver or reduction should be sent to the Commission at one of the following addresses:

Email: applications@compcomm.hk

Mail / Hand Delivery: Room 3601, 36/F, Wu Chung House
213 Queen's Road East
Wanchai, HONG KONG

Applications must be accompanied by a cheque payable to Competition Commission in the required amount.