

Revised Draft Guideline on **Investigations**

30 March 2015

Contents

Guideline on Investigations

... have ... form in which
... provisions of the Ordinance are to

*In addition to these Guidelines, the Commission and C
be releasing other policy documents, including on Leniency
These documents will also be of relevance to the
eholders of an investigation under P
Ordinance.*

*While the Commission is the pr
authority responsib*

I Introduction

The Ordinance applies to all sector
has the object or eff

Initial Assessment Phase

Investigation Phase

2 Sources of Commission Investigations

entions of the Ordinance from
and internet intelligence gathering;
a investigations; or
the courts³ or other statutor
the conduct for investigation.

3 Initial Assessment Phase

The Initial Assessment Phase is used b

(a)

Assessment Phase the Commission may
such as:

- (a) contacting par

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4 Possible Outcomes of Initial Assessment Phase

the Commission may also require the Respondent to take such action as the Commission may direct, such as a commitment under section 60 of the Ordinance where the Commission is satisfied that the Respondent has committed a Contravention of a Competition Rule.

If the Commission is satisfied that there is no further action in relation to a complaint from a Complainant, the Commission may inform the Complainant in writing.

For further guidance on the outcomes at paragraph 4.4, see Part 7 of this Guideline.

4.4 If the Commission proceeds to the Initial Assessment Phase

The Commission will inform the Complainant of the outcome of the Initial Assessment Phase. This may be by letter or by email. The Commission may also inform the Respondent of the outcome of the Initial Assessment Phase. This may be by letter or by email.

5 Investigation Phase

The Ordinance requires the Commission to ha
contravention of a Competition Rule bef

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Written requests for documents and information (section 41 notices)

information
relevant to an investigation from
suppliers and

suant to sections 41(3) and (4) of the Ordinance,

indicate the subject matter and pur
specify or describe the documents and/or inf
requires;

(c) provide details of where

(d) provide details of where

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Section 41 notices will often include questions or other requests to provide information in a particular form or to produce documents, or to provide access to documents, or to provide access to information.

REVISION

***Request for attendance before the Commission to answer questions
(section 42 notices)***

... of

...

... any stage of the Inv

... For example, the Commission ma
... ore it after considering responses pro led in
... ore the Commission or to ask about inf ... obtain ... both

When setting the time and place ... re it the
... ange of factors including the resources a ... p on
... matter

... on to appe ... may ...
... by a legal ad ...
... by r ... es

Enter and search premises under warrant (section 48 warrant)

Under section 48 of the Ordinance
of First Instance f
information and other items relevant to its in

5.24

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...y and/or access evidence on the premises;
...ecution of the warrant (including individuals who
...of the ... and
...e such action and steps as necessary for the preservation of an
...ention of any interference with them (including the
...val of such documents from the premises),
...taking possession of any computer or other device found on a premises
...that Commission officers believe will, ... on an
...contravention.

5.32 The Commission is not required to attend the premises before a warrant is issued if the person to whom the warrant is issued has requested that their legal adviser

seek explanations from individuals present at the premises about an
which may appear to be relevant.

To facilitate an eff

Statutory declarations regarding evidence

Legal professional privileged communications

Obligations of confidence

...viding any
...where an
...Section 46 also provides that such
...or a disclosure required under the Ordinance.

Self-incrimination

...person is not excused from giving an
...s about a document,
...on the grounds that to do so might expose the individual to
...proceedings in which the Commission seeks a pecuniary...

No statement made under compulsion b
...Court
... explanation or further par
... pursuant to P 3
... is admissible

Immunity

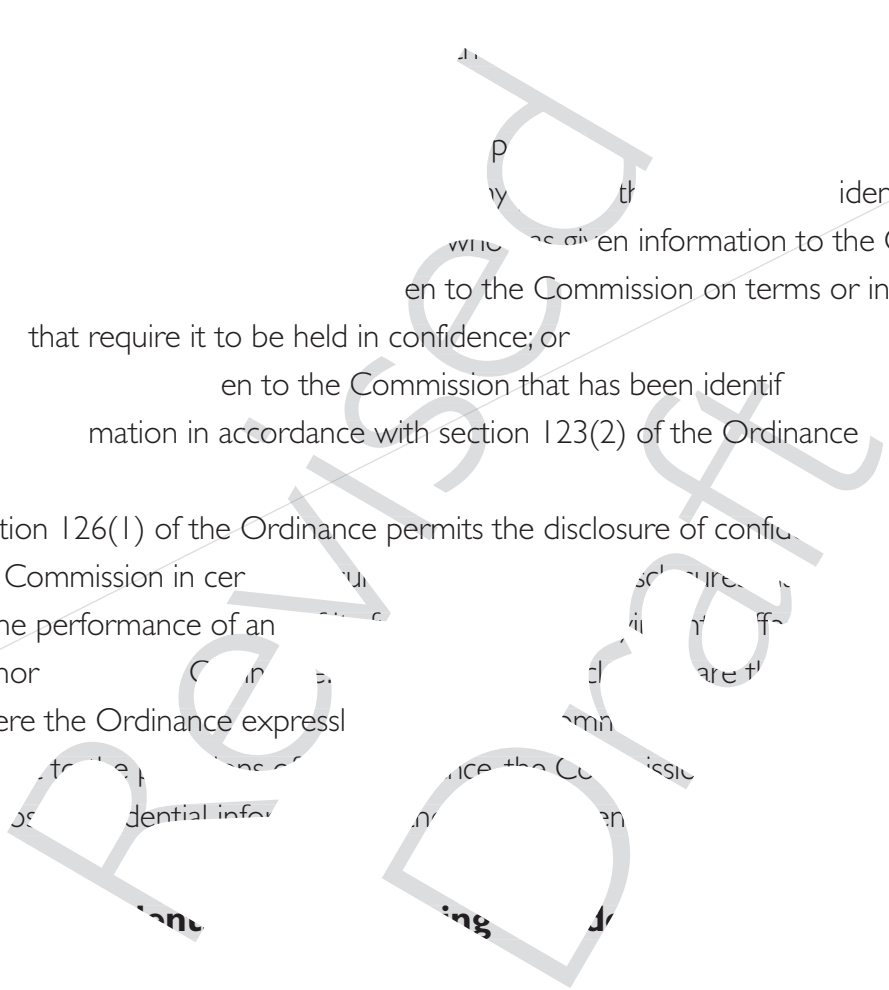
or non-compliance with the Commission

Section 52 of the Ordinance pro
with any requirement (or prohibition) imposed under the Commission

6 Confidentiality and Disclosure

... confidential nature; or
... information to the Commission;
... on terms or in circumstances
that require it to be held in confidence; or
... information that has been identifi-
cation in accordance with section 123(2) of the Ordinance

Section 126(1) of the Ordinance permits the disclosure of confi-
the Commission in cer-
in the performance of an
author-
where the Ordinance expressl-
to the p-
of confidential info-



As set out in paragraph 6.13 of this Guideline
interests to clearly specify the reasons f

Disclosure of inf Assessment and In

6.8

Disclosures made in the performance of the Commission's functions

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Disclosures made in accordance with a court order or by law

Cooperation between competition authorities¹⁰

Under section 128(1) of the Ordinance, a person who has jurisdiction with the CA, or who has obtained information in the course of an investigation between the Commission and the CA, shall not disclose that information to any other person unless the disclosure is made in accordance with a court order or by law.

Obligations to maintain confidentiality

Where a disclosure of confidential information is made in accordance with section 128(1) of the Ordinance, the person who has obtained the information has an obligation under section 128(1) of the Ordinance to maintain the confidentiality of that information. It is an offence for a person to disclose that information to any other person or permit any other person to disclose that information to any other person unless the person maintains such confidentiality is an offence under section 128(2) of the Ordinance.

6.16 Under section 128(2) of the Ordinance, a person who discloses confidential information in contravention of section 128(1) of the Ordinance shall be liable to a fine of not more than \$100,000 or to imprisonment for not more than 2 years, or to both such fine and imprisonment.

Information by the Commission

Subject to legal requirements to the contrary,
in one matter may
Commission will not nor

7 Possible Outcomes of Investigation Phase

PROCESSED

at any stage the Commission may accept a
remain from taking any action from par
The Commitment process¹² may be initiated b
estigation at any time.

If the Commission accepts a Commitment,
and not to bring proceedings in the Tr
proceedings).

7.10 Section 61(1) of the Ordinance pro
acceptance of a Commitment in the ev

son fails to comply with a section 60 Commitment accepted b
the Commission may seek to enf
of the Ordinance

Issue W

7.14

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...; if the person receives an Infringement Notice before
appearing before the Tribunal or accepting a Commitment under section 60

Tribunal

... if the person has reasonable cause to believe that the person
has been involved in such a contract or has been involved in the contract
before the Tribunal under sections 92, 93 or 94 of the Ordinance
to seek appropriate orders and sanctions under sections 95 and 98 of the Ordinance
persons involved in a contract or persons who have been involved in the contract
the Ordinance or persons who have been involved in the contract
counselled or procured any person to enter into a contract or to do anything in relation to a contract.

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If proceedings are commenced in the T
as soon as practicable after commencing proceedings.

Apply for a consent or

7.23

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