

競爭事務委員會
COMPETITION
COMMISSION

Webinar on Competition Ordinance

29 September 2021



Outline

1. Background and Overview
2. Key Elements of the Competition Ordinance and Red Flags of Anti-competitive Practices
3. The Commission's Enforcement Work
4. The Commission's Various Policies
5. Competition Law Case Studies
6. Q&A



1. Background and Overview



Background

- About 130 years ago, the US and Canada enacted antitrust laws to prohibit anti-competitive conducts.
- European countries also introduced competition law after WWII.
- Today, over 130 jurisdictions have enacted competition laws, including the Mainland, Japan, South Korea, India, Singapore, Malaysia and Indonesia.
- Hong Kong:
 - Sectoral competition regulation was introduced for the telecom and broadcasting industries in late 1990s
 - Competition Ordinance (Cross-sector):
 - Passed in June 2012
 - Full commencement since 14 December 2015



Two Cardinal Principles

“Protect competition and not competitors”



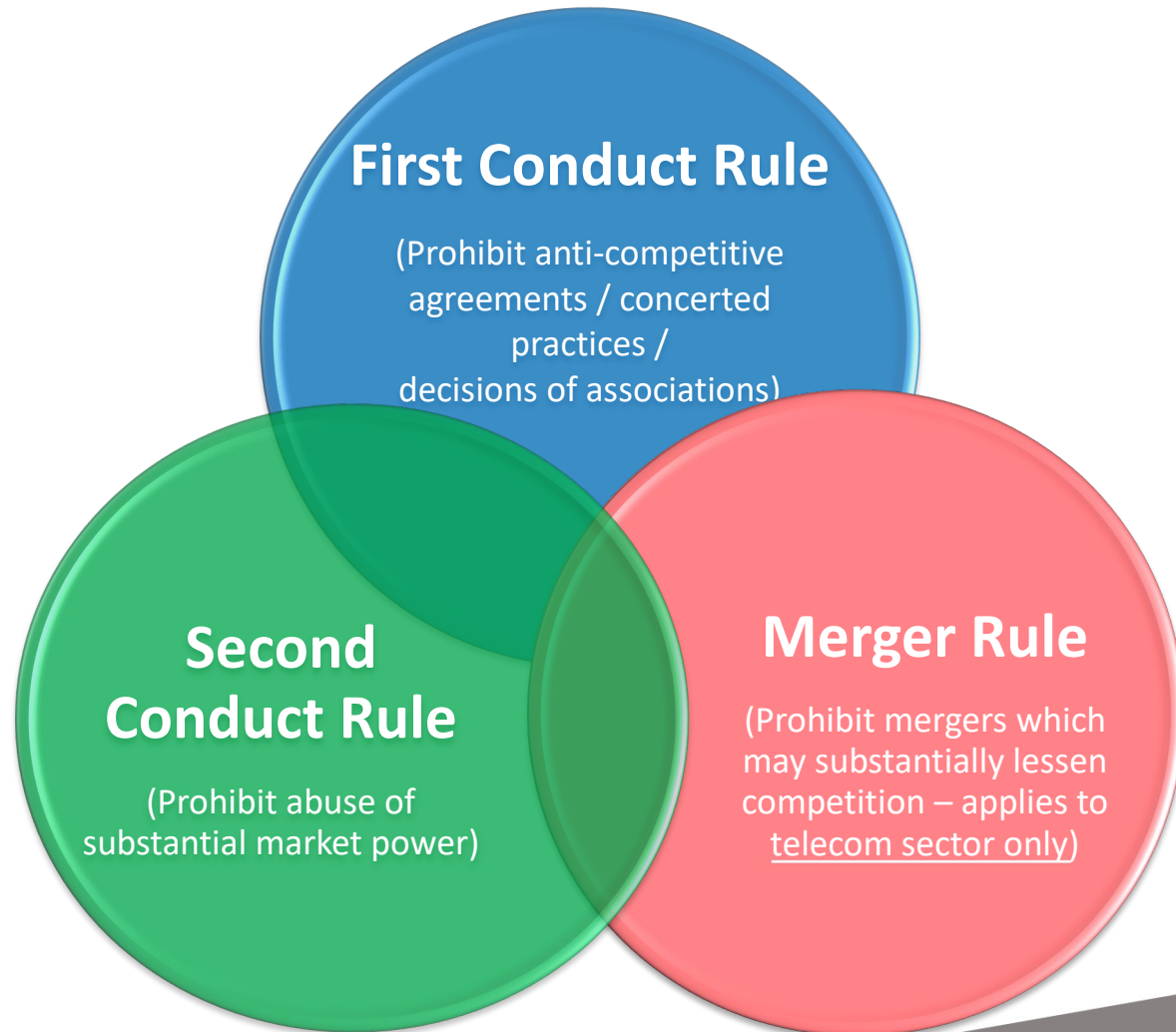
“Substance over form”



2. Key Elements of the Competition Ordinance (CO) and Red Flags of Anti-competitive Practices



Competition Rules under the CO (Cap.619)



The First Conduct Rule (FCR)



- Prohibits an **undertaking** from making or giving effect to an **agreement** if the agreement has the **object or effect** of harming competition in Hong Kong; also applies to **concerted practices**; and **decisions** of associations
- Prohibits all kinds of anti-competitive agreements, involving at least 2 undertakings



The First Conduct Rule (FCR)



- Applicable to:
 - “**Horizontal**” agreements (arrangements between competitors in a market)
 - “**Vertical**” agreements (arrangements between businesses at different levels of a supply chain)



The First Conduct Rule (FCR)



- Arrangements that have the “**object**” of harming competition:
 - “**Cartel**”: **price fixing, market sharing, bid-rigging and output restriction**
 - Regarded as **serious anti-competitive conducts** under the Ordinance



First Conduct Rule – *Price Fixing*

- Competitors agreeing to **fix, increase, lower, maintain or control the price** for the purchase or sale of goods or services
- May involve competitors agreeing upon **a specified price, a price range or a formula to calculate prices**
- “Price” includes any element of price including **discounts, rebates, promotions, credit terms etc.**
- **Regardless of the form of the agreement:** verbal, written, electronic, etc.
- Competitors should independently determine the prices of their goods or services

“Let's fix our profit margin at 10% to ensure market stability.”



“Compete with Integrity” video: Price Fixing



Red Flags of Price Fixing

- Quotes are much higher than expected
- Prices from different suppliers change in the same amount or percentage at the same time, with no relation to the underlying costs
- A new supplier's price is much lower than the usual suppliers
- Prices from different suppliers stay identical for long periods of time, especially when they were previously differentiated
- Discounts are eliminated, especially in a market where discounts were previously available



First Conduct Rule – *Market Sharing*

- Competitors collude to divide up markets by agreeing:
 - Not to sell to each others' **customers**
 - Not to compete in each other's **agreed territories/ geographical areas**
 - Not to compete in the **production or sale of certain products or services**
 - Not to **enter or expand into a market where another party to the agreement is already active**

"If you don't compete with me in Kennedy Town, I won't compete with you in Sai Ying Pun."



“Compete with Integrity” video: [Market Sharing](#)



Red Flags of Market Sharing

- Competitors suddenly stop selling in a territory
- Competitors suddenly stop selling to a customer
- Competitor refers customers to other competitors
- Salesperson or prospective bidder says that a particular customer or contract “belongs” to a certain competitor



First Conduct Rule – *Bid-rigging*

- When two or more bidders secretly agree that they will not compete with one another for particular projects
- Bid-rigging can take a number of forms, for examples:
 - **Bid suppression**
 - **Cover bidding**
 - **Bid rotation**
 - Others: agree on **minimum bidding prices**, or agree that **the winning bidder will reimburse other bidders' bid costs**
- Competitors should make their tender decisions independently

"I'll bid high on this tender if you let me win the next tender."



Educational video: Cartel



Red Flags of Bid-rigging

- Suspicious signs in documents submitted
 - Bids containing identical wordings, particularly if the wordings are unusual
 - Bids containing the same handwriting or typeface or using identical forms or stationery
- Suspicious bidding/ winning patterns and behaviours
 - Regular bidders fail to bid on a tender they would normally be expected to bid for, but have continued to bid for other tenders
 - Bids that are suddenly withdrawn
- Suspicious pricing
 - Sudden and identical increase in prices by most bidders while there have been no substantial increase in costs
 - Bids with identical pricing either on a lump sum basis or line item basis (especially when continued over a period of time)
- Other red flags
 - Indications that the bidders have communicated with each other
 - Suspicious statements indicating that bidders may have reached an agreement



First Conduct Rule – *Output Restriction*

- Any form of arrangements between competitors to reduce the **volume** or **type** of goods or services available in the market
- Competitors should make decisions on what and how much they produce independently

“We should cut our output to address the problem of oversupply.”



“Compete with Integrity” video: Output Restriction



Non-Collusion Clauses

- Published by the Commission for procurers' reference and adaptation
- Including non-collusion clauses in tender documents: to alert tenderers of the prohibitions against, and consequences of cartel conducts
- Including non-collusion clauses in formal contracts: to provide contractual protections to procurers in the event that the tender process has been subject to collusion
- Procurers may consider adding other requirements, e.g. tenderers have to provide information regarding their shareholding structure and/or ultimate controlling entities as requested. This would help procurers better understand the identity of the tenderers



Model Non-Collusion Clauses and
Non-Collusive Tendering Certificate



Chinese:

<http://bit.ly/CCNonCollusionChn>

English:

<http://bit.ly/CCNonCollusionEng>



Non-Collusive Tendering Certificate

- For tenderers to sign as part of their tender submission to declare that the bid is developed independently
- For tenderers to commit to disclosing sub-contracting arrangements relating to the tenders
- Where the bid is submitted jointly by two or more parties (e.g. multiple persons or companies acting in a joint venture), all such parties should sign the certificate



Other anti-competitive conduct under FCR

Information Exchange

- Not all information exchange is anti-competitive
- But the exchange of commercially sensitive information among competitors (whether directly or through a third party) such as information about their **future prices, pricing strategies, discounts, or costs** may have the same effect as price fixing
- Exchange of historical, aggregated and anonymised data, as well as publicly available information is less likely to give rise to competition concerns



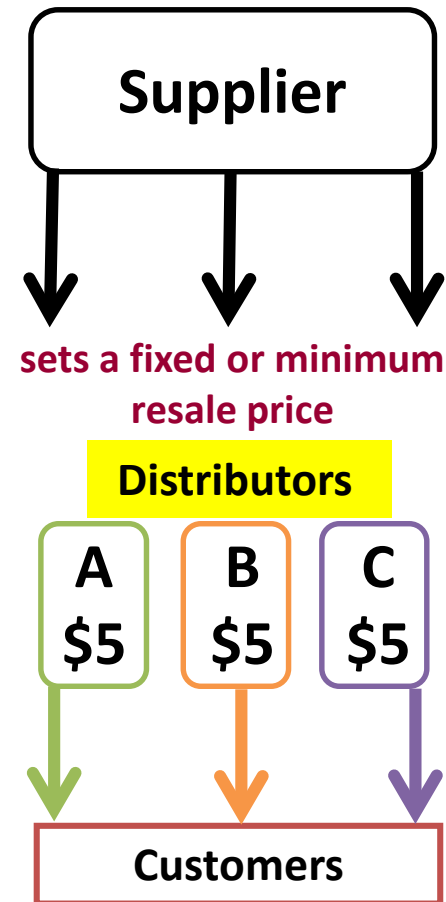
“Compete with Integrity” video: Information Exchange



Other anti-competitive conduct under FCR

Resale Price Maintenance (RPM)

- RPM occurs when the supplier of a product establishes **a fixed or minimum resale price** to be observed by the distributors
- RPM is likely a contravention of the First Conduct Rule of the Ordinance unless there is a sound economic efficiency justification



The Second Conduct Rule (SCR)



- Prohibits undertakings with **substantial market power** in a **market** from **abusing** that power by engaging in conduct which has the **object or effect** of harming competition in Hong Kong
- Relevant *market*:
 - Two dimensions:
Product and **Geographic**
 - Substitutability from the perspective of buyer



The Second Conduct Rule (SCR)



Substantial market power:

- Factors to consider in determining whether an undertaking has substantial market power in a market:
 - Market share of the undertaking
 - Countervailing buyer power
 - Barrier to entry/expansion



The Second Conduct Rule (SCR)



- *Examples of anti-competitive conduct under SCR:*

(1) Predatory pricing

- Charging below its own cost, making a loss for a sufficient duration to force one or more undertakings out of the market and/or to otherwise “discipline” competitors

(2) Refusals to deal

- Refusing to supply an input to another undertaking, or is willing to supply that input only on objectively unreasonable terms



3. The Commission's Enforcement Work



A Prosecutorial Model



Investigation

- Receives complaints
- Investigates cases. Range of enforcement powers – e.g. onsite inspections, requests for documents and interviews
- Can resolve cases by coming to agreement with parties under investigation or applying to Tribunal

Exclusions and Exemptions

- Handles applications for decision on exclusion/exemptions
- Issues block exemption orders – of own volition or following application



Investigation Powers: S.41 and S.42 Notices

- **S. 41 CO** – Request for documents and/or information
 - Reasonable cause to suspect that a person has or may have possession or control of relevant documents/information or may otherwise be able to assist the Commission in its investigation
 - Use S.41 Notices which relate to any matter it reasonably believes to be relevant to an investigation from any person, e.g. subject under investigation, their competitors, suppliers, customers and any other parties
- **S. 42 CO** – Request for attendance before the Commission to answer questions
 - At a specified time and place
- **Both S.41 and S.42 Notices:**
 - Can be used at any stage of the Investigation Phase
 - May be issued to same party/person more than once
 - Non-compliance to S.41 and S.42 Notice is a contravention of S.52 CO



Investigation Powers: *S.48 Warrant*

- **S. 48 CO – Enter and search premises under warrant**
 - Issued by a judge of the Court of First Instance
 - Will exercise S.48 power in below circumstances (not exhaustive):
 - a) Secretive conduct
 - b) Documents/information may be destroyed or interfered should the Commission seek them through other means
 - c) Commission has been unsuccessful in obtaining specific or categories of documents/information OR suspects non-compliance

- During the search, Commission officers will:
 - search, copy and/or confiscate relevant documents and equipment that are relevant to the investigation;
 - seek explanations from individuals present at the premises about any documents which may appear to be relevant



Enforcement Tools & Remedies



Remedial goals:

- Swift end to illegal conduct
- Undo any harm caused
- Encourage effective compliance
- Deterrence
- Consistency
- Proportionality



Competition Tribunal



Adjudication by the Competition Tribunal

- Determines contraventions of the Ordinance
- Power to impose penalties (fines, director disqualifications) and other orders
- Hears review of “reviewable determinations”
- Tribunal Rules govern procedures



Pecuniary Penalty

- After investigation, the Commission may apply to the Tribunal for a **pecuniary penalty** to be imposed on any person it has reasonable cause to believe has contravened a competition rule; or has been involved in a contravention of a competition rule
 - *“Has contravened a competition rule”*: Primary contraveners
 - *“Has been involved in a contravention of a competition rule”*: Secondary liability (s.91 CO)
- Statutory maximum in relation to **conduct that constitutes a single contravention**:
 - 10% of the turnover of the undertaking concerned in Hong Kong for each year in which the contravention occurred; or
 - If the contravention occurred in more than 3 years, 10% of the turnover of the undertaking concerned for the 3 years in which the contravention occurred that saw the highest, second highest and third highest turnover



Other Orders

- If the Tribunal is satisfied that a person (includes undertakings and individuals) **has contravened, or has been involved in a contravention** of a competition rule, it may make any order it considers appropriate against that person, including:
 - Declaration of contravention - relevant for follow-on proceedings
 - Director disqualification
 - Compensation
 - Restitution
 - Injunctions etc.

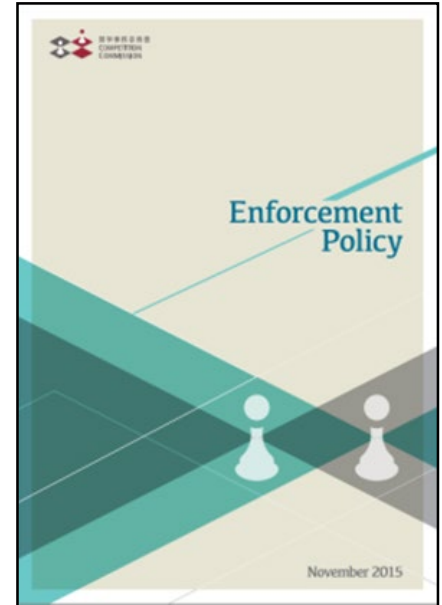


4. The Commission's Various Policies



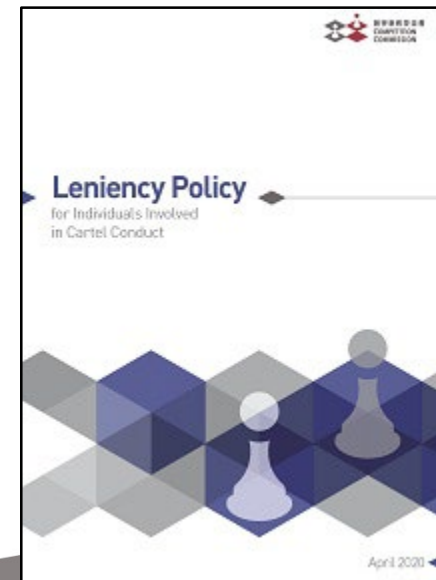
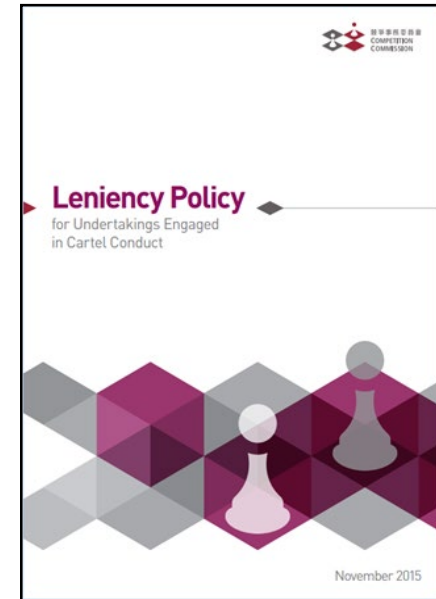
Enforcement Policy

- Commission will target anti-competitive conduct that is clearly harmful
- Priority given to following types of conduct:
 - cartel conducts (price fixing, market sharing, output limitation and bid rigging)
 - other agreements contravening First Conduct Rule causing significant harm to competition in HK and
 - abuses of substantial market power involving exclusionary behaviour by incumbents
- In addition to taking action against undertakings, the Commission may also prioritise taking action against:
 - associations of undertakings; and/or
 - officers (as defined in the CO), including directors and managers of undertakings



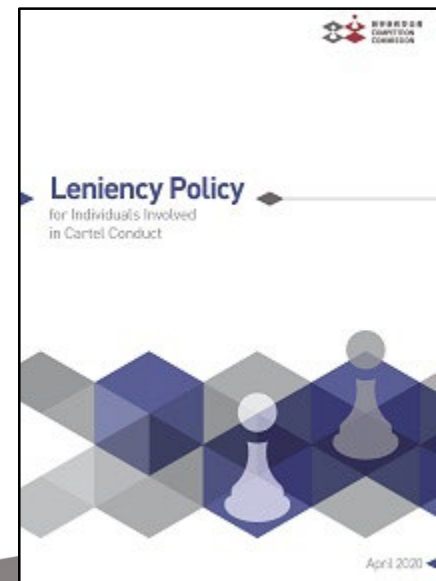
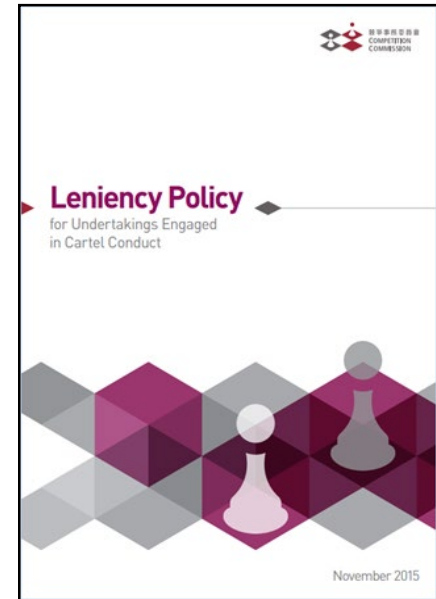
Cartel Leniency Policies

- To provide a strong, transparent, and predictable incentive for an undertaking who is engaged or involved in cartel conduct to stop their conduct and report the conduct to the Commission
- Key elements of Leniency Policy for Undertakings:
 - Only in respect of **cartel conduct** (First Conduct Rule)
 - **Type 1** and **Type 2** Leniency
 - Leniency extends to **current officers / employees** of the cartel member
 - **Excludes ringleader/coercer**
 - The successful applicant will sign a **leniency agreement** with the Commission and fulfil the conditions and obligations therein
- Leniency Policy for individuals introduced in April 2020



Benefits of Leniency Policies

- The Commission **will not** commence proceedings in the Tribunal against the **first** undertaking or individual who self-reports the cartel conduct to the Commission and meets all other requirements for receiving leniency
- This includes **not** seeking a pecuniary penalty or for an order declaring that the successful leniency applicant has contravened the Ordinance
- Employees and officers of an undertaking that obtains leniency will also be protected from proceedings if they cooperate with the Commission's investigation



How to Apply for Leniency

- Call the Leniency Hotline at **+852 3996 8010** or
- E-mail to: Leniency@compcomm.hk
- The Leniency Hotline is answered between **8am to 6pm** Hong Kong time, **Mon to Fri** (excluding public holidays)



Cooperation and Settlement Policy

- **Undertakings** engaged in **cartels** which **do not benefit from the Leniency Policy**
- May choose to admit their wrongdoings and cooperate with the Commission in its investigations and resulting proceedings
- In return the Commission will offer a discount of **up to 50% off** the pecuniary penalty it would otherwise recommend to the Competition Tribunal
- Entering into a **Cooperation Agreement**
- Jointly apply to for a Consent Order on the basis of a joint statement of agreed facts



Benefits of Cooperation

- **Benefits to the undertakings:**
 - **Recommendation for a reduction in pecuniary penalty**
 - ❖ RPP reduction: **Band 1:** 35-50%, **Band 2:** 20-40%, **Band 3:** up to 25%
 - **Protection for employees, officers, partners and agents**
 - **Other collateral benefits: e.g. reduced reputational harm, saving litigation costs**
- Benefits are **conditional on full and continuous cooperation** in the investigation and subsequent litigation by the undertaking and its employees
- The **order** and **timing** of cooperation determines the amount of benefits (reduction in RPP) available



5. Competition Law Case Studies



Cases in the Competition Tribunal

IT bid-rigging (CTEA1/2017)

- **March 2017:** The Commission commenced proceedings in the Tribunal, alleging that 5 IT companies engaged in **bid-rigging** in relation to a tender issued by the Hong Kong Young Women's Christian Association for the supply and installation of a new IT system
- **May 2019:** The Tribunal ruled that 4 of the companies contravened the First Conduct Rule of the Competition Ordinance
- **December 2020:** The Tribunal ordered these 4 companies to pay a total pecuniary penalty of over HK\$7.16 million and over HK\$8.6 million of the Commission's legal costs

IT firms new bid-rigging suspects



Source: *The Standard*



Cases in the Competition Tribunal

Market sharing & Price fixing - On Tat Estate (CTEA2/2017)

- **August 2017:** The Commission brought a case to the Tribunal, alleging 10 decoration contractors for suspected **market sharing and price fixing** when providing renovation services at Phase 1 of On Tat Estate in Kwun Tong
- **May 2019:** The Tribunal ruled that all 10 decoration contractors contravened the First Conduct Rule of the Competition Ordinance
- **April 2020:** The Tribunal ordered 7 out of the 10 Respondents to pay the maximum pecuniary penalty allowable under the Ordinance. The total amount is HK\$3.97 million. All of the Respondents were also ordered to pay the Commission's legal costs

Watchdog tackles 10 firms over estate price-fixing

Sophie Hui

Ten construction and engineering companies were hauled before the Competition Tribunal for alleged price-fixing when renovating 800 flats at a Kwun Tong public housing estate.

The renovations were done at Phase 1 of On Tat Estate on more than 800 flats and were completed in June last year.

In the second criminal proceedings by the tribunal, Competition Commission chairwoman Anna Wu Hung-yuk put her foot down on "conduct which is particularly egregious when the people directly affected belong to low-income groups such as the residents of the relevant public housing estate in the present case."

The commission is seeking "pecuniary penalties and a declaration" that each



of the 10 companies have contravened the competition law.

Brought before the tribunal are W Hing Construction, Sun Spark Construction, Mau Hang Painting & Decoration, Tai Dou

Building Contractor, Kam Kee Machine Electrical Iron Works, Hip Yick Construction, Tai Wah Civil Engineering, Wai Sun Iron & Decoration, Wide Project Engineering & Construction and Luen Hop Decoration Engineering.

The firms allegedly made a market-sharing agreement on supplying decoration works to tenants of Chun Tat House, Oi Tat House and Shing Tat House in the public estate. Each of the firms allocated the works for four floors of each of the three houses, and would refer businesses to the "allocated" company if tenants from other floors asked.

They also allegedly reached a price-fixing agreement to make sure they charged the same prices for providing the services.

The commission said the 10 companies contravened the First Conduct Rule of the Competitive Ordinance by "making and giving effects to a market-sharing agreement and a price-fixing agreement," which are two of the four serious anti-competitive conducts under the ordinance. The other two are fixing or eliminating the supply of goods and bid rigging.

Wu said the alleged malpractice of the 10 companies had greatly affected the residents of the estate, while market sharing and price-fixing "are serious anti-competition practices which lead to reduced consumer choices and noncompetitive high prices, hurting consumers, other businesses and the economy as a whole."

The commission filed the Originating Notice of Application yesterday, triggering the start of proceedings at the same time in the tribunal.

This is the second case that the commission has taken firms to the Competition Tribunal after the Competition Ordinance came into effect in December 2015 to promote competition and prohibit anti-competitive practices.

The commission took its first case to the tribunal in March, in which five information technology companies were allegedly involved in bid rigging for a new server system for an NGO.

By the end of last month, the commission had received more than 2,300 complaints and inquiries from different sectors under the ordinance.
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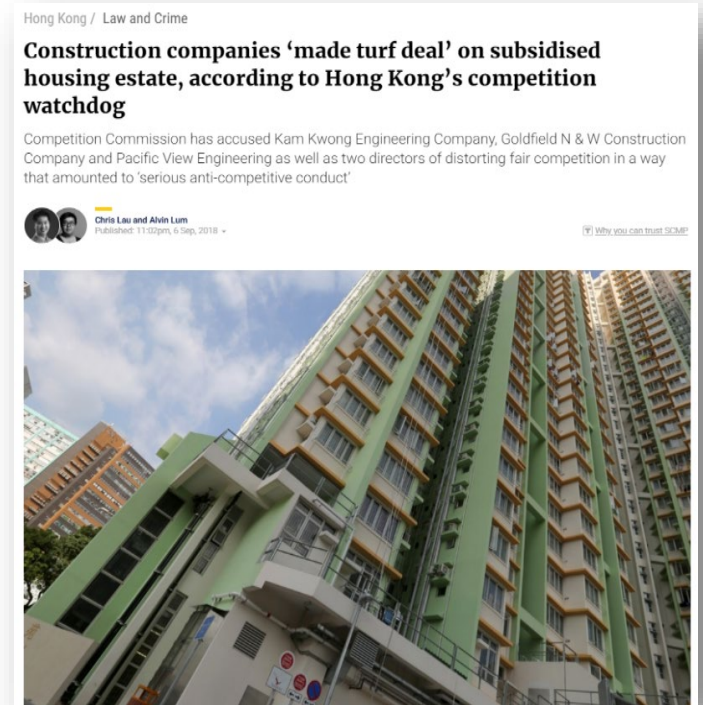
Source: *The Standard*



Cases in the Competition Tribunal

Market sharing & Price fixing – King Tai Court (CTEA1/2018)

- **September 2018:** The Commission commenced proceedings in the Tribunal against 3 decoration contractors and 2 individuals for suspected **market sharing and price fixing** when providing renovation services at King Tai Court in San Po Kong
- **July to August 2020:** All Respondents admitted liability. The Tribunal ruled that all of them contravened the First Conduct Rule of the Competition Ordinance
- The Tribunal's judgements on sanctions is pending



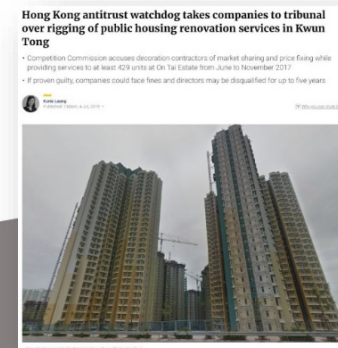
Source: SCMP



Cases in the Competition Tribunal

Market sharing & Price fixing – On Tai Estate (CTEA1/2019)

- **July 2019:** The Commission commenced proceedings in the Tribunal, alleging 6 decoration contractors and 3 individuals for suspected **market sharing and price fixing** when providing renovation services at Phase 1 of On Tai Estate in Kwun Tong
- **October 2020:**
 - All Respondents admitted liability. The Tribunal ruled that all of them contravened or were involved in the contravention of the First Conduct Rule of the Competition Ordinance
 - The Tribunal issued the first director disqualification order to an individual, prohibiting him from serving as a director for 22 months
- **January 2021:**
 - The Tribunal ordered 6 decoration contractors and 2 individuals to pay a total pecuniary penalty of over HK\$3.26 million



Cases in the Competition Tribunal

IT cartel case (CTEA1/2020)

▪ January 2020:

- The Commission commenced proceedings in the Tribunal, alleging an IT company and its director (Respondents) for their participation in **cartel conduct** in relation to a bidding exercise organised by the Ocean Park Corporation in 2017 for the procurement of IT services
- The IT company is alleged of **exchanging competitively sensitive information** with a co-bidder regarding their intended quotations in the bidding exercise, in an effort to coordinate which company was going to win, amounting to **price fixing**
- The Commission also issued an infringement notice to another IT company participated in the same cartel. It is the first time the Commission issued an infringement notice
- This case also represents the first set of proceedings resulting from a successful leniency application



Source: SCMP

COURTS

IT firm in hot water over Ocean Park contract bid

Kanis Leung
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The antitrust watchdog yesterday accused an IT company and its director of colluding with other businesses when bidding for a project at Ocean Park. The Competition Commission said yesterday that it had started legal proceedings against Quantr Ltd and its director, Peter Cheung Man-kit. The watchdog accused the firm and its

co-bidder, which it did not name, of exchanging sensitive information related to their intended quotations to coordinate who would win the procurement of IT software services for the theme park. It said the case was discovered after the co-bidder came forward and asked to be treated with leniency by the commission. Under their "leniency agreement", the commission said it would not take action against the firm or its employees, in exchange for their cooperation.

"These are the commission's first enforcement proceedings resulting from a successful leniency application, which is an important enforcement milestone," Brent Snyder, the commission's CEO, said in a statement. "The outcome is likely to be litigated proceedings before the Competition Tribunal." The case was the fifth filed by the watchdog at the Competition Tribunal since antitrust regulations went into effect in late 2015. Last year, it won its first two cases.

Commission documents revealed that a former employee of the software's original supplier, Nintex Proprietary, had directed the firm's two resellers - Quantr and the whistle-blowing company - to communicate with each other before submitting their bids to Ocean Park in 2017. The two resellers did so, and Quantr eventually won the bid. The amount of money involved was not disclosed. The Post reached out to Ocean Park for comment.

Cases in the Competition Tribunal

IT cartel case (CTEA1/2020)(Continued)

▪ **November 2020:**

- The Tribunal ruled that 2 Respondents contravened or were involved in the contravention of the First Conduct Rule of the Competition Ordinance
 - An IT company (one of the Respondents) had to pay a pecuniary penalty of HK\$37,702 and both Respondents had to pay the Commission's legal costs
 - The Tribunal also suspended the remaining claims originally sought by the Commission, including the director disqualification order against one of the Respondents, on condition that the Respondents conduct a competition compliance programme for all of its staff
- First case in which the Commission and the Respondents reached agreement to resolve both the liability and relief portions of the proceedings by consent
 - Agreement was reached at an early stage, saving both sides significant time and costs



Cases in the Competition Tribunal

Textbook cartel case (CTEA2/2020)

- **March 2020:** The Commission brought a case to the Tribunal, alleging that 3 textbook suppliers and 1 individual engaged in **price fixing, market sharing,** and/or **bid-rigging** in relation to the sale of textbooks to students attending primary and secondary schools in Hong Kong



Source: SCMP



Cases in the Competition Tribunal

Hong Kong's first case on abuse of substantial market power (CTEA3/2020)

- **Dec 2020:** The Commission brought a case to the Tribunal, alleging that 2 companies (as parts of a single undertaking) and 1 individual engaged in **abuse of substantial market power** in the medical gases supply market in Hong Kong to the detriment of competition in the downstream medical gas pipeline system maintenance market

Gas supplier faces competition law trial

Jane Cheung

The Competition Commission has filed the city's first case on abuse of substantial market power against a medical gas supplier, accusing it of distorting competition and affecting public hospitals' consumer interests.

The watchdog has filed the case with the Competition Tribunal against Linde HKO and Linde GmbH for abusing Linde's "substantial degree of market power" in Hong Kong's medical gas supply market between October 2015 and January 2018, hindering competition in the downstream medical gas pipeline system maintenance market.

It is also pursuing Linde HKO's general manager Tse Chun-wah, who was "actively involved in formulating and executing" the exclusionary acts, for contravening the Competition Ordinance.

The commission alleged Linde limited or even ceased supply of medical gases to MGI (Far East), the only other potential pipeline maintenance service provider for public hospitals.

Describing Linde as having a "de facto monopoly posi-



Samuel Chan said the case affected hospitals serving 90 percent of patients in the city.



tion" in the medical gas supply market, the watchdog said it engaged in exclusionary acts ranging from unjustified denial of supply of gases essential for maintenance services to unreasonable trading terms so MGI could not compete for pipeline maintenance contracts.

It is also seeking orders to declare Linde and Tse to have contravened the Second Conduct Rule of the ordinance, which prohibits businesses from abusing its market power to prevent, restrict or distort competition in Hong Kong.

Abusive conduct includes refusals to deal, margin squeezing, predatory pricing, tying and bundling, and any behavior that can ultimately limit choices available to consumers.

The commission is also asking the tribunal to impose fines on Linde and Tse and disqualify Tse as a director for up to five years.

The commission's chairman Samuel Chan Ka-yan said: "The egregious nature of the conduct seriously affected public hospitals which provide close to 90 percent of hospital services to all Hong Kong patients."

Contravention of the ordinance could result in a fine of up to 10 percent of the company's annual turnover for a maximum period of three years.

The tribunal can also issue orders requiring compensation for victims.

As of last month, the commission had received over 4,600 complaints and inquiries, with 55 percent related to the First Conduct Rule, which prohibits anti-competitive agreements, and over 17 percent about concerns under the Second Conduct Rule.

Source: *The Standard*



Other Cases

The Commission pursues facilitators of cartel conduct for the first time

- **February 2021 :**
 - The Commission issued **infringement notices** to 7 entities, including 6 hotel groups and a tour counter operator (the “Recipients”)
 - The Recipients **facilitated a cartel arrangement** between 2 competing travel service providers
 - The arrangement fixed and/or controlled prices of tourist attractions and transportation tickets sold at the premises of certain hotels in Hong Kong
 - The Recipients acted as **“facilitators”** by passing on pricing information between these 2 competitors in circumstances where they had actively contributed to the implementation of the **price fixing** agreement
 - The Commission has reasonable cause to believe that the above arrangement had the object of harming competition in Hong Kong in contravention of the First Conduct Rule of the Competition Ordinance

COMPETITION

HK HOTELS LINKED TO CARTEL BREACH

Regulator finds major groups passed on information that helped travel service operators fix prices

Laura Westhead
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The competition watchdog has sought names of Hong Kong's largest hotel groups and a tour operator passing information between two travel service operators that fixed the price of tickets for tourist attractions and transport.

Instead of bringing them to a tribunal, the Competition Commission yesterday said it had decided to issue infringement notices to the companies who supported and "perpetrated" the scheme to work together.

This is the first time the commission has pursued facilitators

of cartel conduct, driving home the message that not only cartels, but third parties who facilitate cartel conduct between competing businesses may also be subject to the commission's enforcement action.

The investigation was a signed by chairman Samuel Chan, adding that the price of "some class of similar goods".

A competition investigation found that between March 2016 and May 2017, Gray and the UK Labs agreed to fix prices for tourist attractions and transport tickets, including Hong Kong, Disney, Ocean Park, the Peak Tram, Ngong Ping 360 Cable Car and Airport Express, which were sold at the hotels.

This also includes selling discounted tickets via its "Travel" devices installed in hotel rooms, which Gray Labs complained was harming business, as price levels were raised.

The commission found six hotel groups and a tour operator passed on pricing information and communications between the competitors. While the seven did not sell tickets, they "perpetrated" the cartel by actively contributing to the implementation of a price fixing cartel between the two competing travel service providers.

The nine properties run by the groups were City Garden Hotel, Holiday Inn Golden Mile, the former Hotel Panorama, the Marco Polo Hongkong Hotel, Marco

Polo Gateway, Marco Polo Prince, Royal Plaza Hotel, Royal View Hotel and Royal Park Hotel. Major hotel groups owned and operated them.

The tour operator involved was Imperial Tours Limited.

The commission believed the arrangement harmed competition in contravention of the First Conduct Rule of the Competition Ordinance.

By deciding not to bring the case to a tribunal, the watchdog said it had considered a number of factors, including the nature of the conduct as facilitators and their "passive and active" cooperation with the public.

As it reported that the groups failed to comply with any of these

statements of the infringement notices, it would not rule out taking them to a tribunal.

In response, the hotel groups and operators committed to take concrete measures to enhance competition compliance.

Five of the hotel groups agreed to appoint an independent compliance adviser.

The three Marco Polo Hotels, operated by Wharf Hotels, said they were more fully compliant with the law, taking measures in child but not limited to a competition compliance programme and new training for associates.

Imperial Tours and First Panorama Company had also committed their staff to do extra training and implement a competition compliance policy.

The commission said its investigation against other parties in the cartelling.

By the end of January, the commission had received more than 400 complaints and enquiries concerning suspected cartels, including travel and tourism. Nearly 20 per cent were related to alleged cartel conduct.

This is the first time the commission has pursued facilitators of cartel conduct

SOURCE: COMPETITION COMMISSION

Source: SCMP



Other Cases

The Commission pursues facilitators of cartel conduct for the first time (continued)

- **February 2021 :**
 - The Commission considers the use of **infringement notices** and getting commitments from the Recipients over bringing actions against them in the Competition Tribunal to be the most appropriate approach proportionate to the circumstances of this case. The factors of consideration include:
 - the nature of conduct of the **“facilitators”**
 - their early and **active cooperation with investigation**
 - In the **infringement notices**, each of the Recipients admitted that they had contravened section 6(1) of the Ordinance and committed to take concrete measures to effectively enhance competition compliance within their respective businesses
 - The Commission’s investigation against other parties in this case is ongoing



Education and Advocacy



Publications

- Six guidelines providing guidance on Commission’s interpretation and enforcement of the Ordinance
- Enforcement Policy, Leniency Policies, Cooperation and Settlement Policy and Policy on Recommended Pecuniary Penalties
- Brochures introducing the Ordinance in an easy-to-understand approach

Educational videos

- Educational videos on “Fighting Bid-Rigging”, “Cartel” and “Combat Price Fixing Cartels”
- Short videos and micro movie explaining the Ordinance and cartels

Seminars

- Regular seminars to promote public understanding of the Ordinance



Complain and Report

- Completing an Online Complaint Form available on the Commission's website:
www.compcomm.hk
- Email: complaints@compcomm.hk
- Reporting number: (852) 3462 2118
- Leniency hotline: (852) 3996 8010
- Post: Competition Commission
19/F, South Island Place,
8 Wong Chuk Hang Road,
Wong Chuk Hang, Hong Kong
- In person at the Commission's office (by appointment only)



Q&A



Thank You!

