

Competitors' exchange of sensitive information raises red flags

In Hong Kong's knowledge-driven economy, the above-board exchange of information on diverse business matters among companies is considered an integral part of their commercial operations and harmless to competition.

Generally, it is normal commercial behaviour when businesses pass to one another knowledge about their respective best business practices. It is also fine to exchange publicly available information, historical data disseminated in an aggregated format, and statistics available without any identifying particulars.

However, when businesses which are competitors feed one another, often secretly, with competitively sensitive information about their own operations and details of their future business plans, it becomes a concern under the Competition Ordinance. It is also problematic when the exchange of such information is facilitated through a third party conduit, such as a common supplier, distributor or a trade association.

Information considered competitively sensitive includes price, elements of price or price strategies, production costs, turnover, sales, capacity, marketing plans, risks, investments, as well as technologies and innovations. Within this broad category, information relating to price (including future prices) and quantity is generally regarded the most competitively sensitive as the exchange of these information makes it easier for competitors to predict each other's behaviour and adjust their own accordingly, thus reducing competition in the market.

Law-breaking Ferry operators

Two ferry operators - Batam Fast Ferry Pte Ltd and Penguin Ferry Services Pte Ltd - in Singapore formed

an information exchange cartel that diminished their incentives to set independent pricing decisions. Competition was undermined as a result.

During certain periods between 2007 and 2009, Batam and Penguin were the only two operators providing ferry services for the routes between Singapore (HarbourFront) - Sekupang and Singapore (HarbourFront) - Batam Centre. The two companies exchanged confidential price information in relation to ferry tickets sold to corporate clients and travel agents for these two routes. Knowing what their competitor charged meant that each company could safely keep their fares at high levels, without risk of being undercut by the other company.

The Competition Commission of Singapore (CCS) launched an investigation into the case. Concrete evidence was gathered, including blind-copied emails among executives of the two companies, proving that the two ferry operators did exchange confidential information relating to ferry ticket pricing. The CCS ruled in July 2012 that the two ferry operators had infringed the country's Competition Act and imposed heavy fines on them.

Shared confidential banking data

In this case occurred in Hungary, the unlawful exchange of sensitive information between competitors was facilitated by third parties acting as the conduit - the Hungarian Banking Association and the International Training Centre for Bankers Ltd.

The focus of the case was the so-called "BankAdat" database which was operated by the banking association in collaboration with the training centre for 12 years. "BankAdat" was operated in a way that

enabled member banks of the association, who were supposedly competitors, to share private, confidential and strategic data, covering quantities, demand and costs of bank products and services. Banks involved in the case allegedly used the available information for devising business plans, strategies and for product development. The information exchange undermined competition in various areas, including price, quality and innovation of the banks' products and services.

Both the association and training centre were found by the Hungarian Competition Authority (GVH) to have breached the competition law in both Hungary and the European Union. Because the banking association was ruled by GVH as the active member in the case, it was fined 13 million euros. The training centre, which was found to have played the role of a contributor, was fined 50,000 euros.

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Did you know?

Since the Competition Ordinance came into full effect in December 2015, the Competition Commission has received over 2,000 complaints and enquiries. Majority were on the First Conduct Rule which includes cartels, resale price maintenance and information sharing. Anyone reporting a suspected case to the Commission should include all available evidence preserved in its original state. Complainants should not make public that they are making a complaint to the Commission as this will alert the suspects and substantially reduce the prospect of the Commission securing evidence to support its case.

What happens abroad?

Competition law is named "antitrust law" in the US. The term antitrust arose because in the 1880s and 1890s in the United States, some large corporations used trusts to conceal the nature of their anti-competitive business arrangements. Big trusts became synonymous with monopolies, and the perceived threat to the free market these trusts represented led to passage of the Sherman and Clayton Acts, which are taken as the starting point of modern competition law. During the 20th century, other market economies around the world gradually saw the need for similar laws.



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