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For Immediate Release

### **Competition Commission welcomes Court of Appeal ruling on pecuniary penalties**

The Competition Commission (“Commission”) welcomes the judgment (“Judgment”) handed down by the Court of Appeal today (2 June) in relation to appeals lodged by the Commission against pecuniary penalties imposed by the Competition Tribunal (“Tribunal”) on five respondents in its earlier decisions concerning market sharing and price fixing in renovations projects at two public housing estates in Hong Kong (On Tat Estate and On Tai Estate).

In its Judgment, the Court of Appeal agreed with the Commission’s case that the respondent construction and engineering contractor companies, which had lent their Housing Authority licenses to other subcontractors, should not be given a lower pecuniary penalty solely because it was their subcontractors who had entered into the market sharing and price fixing agreements in point and the respondents had no direct participation in the cartel.

Specifically, the Court of Appeal found that the individual respondents and their respective subcontractors were considered to be the same undertaking under the law, and should be liable for the entire penalty that is to be imposed on the undertaking. No discounts in penalty should be given, despite the respondents were themselves not direct parties to the price fixing and market sharing arrangements.

The Court of Appeal also agreed with the Commission that the subcontracting arrangement of head-contractors lending their licenses to subcontractors, in breach of the licensing terms of the Housing Authority and against public interest, should not be recognised as a mitigating factor.

Mr. Rasul Butt, Chief Executive Officer of the Commission, said, “As one of the very first cases on competition matters decided by the Court of Appeal in Hong Kong, the Judgment handed down today establishes an important precedent on the roles and responsibilities of every person engaged in economic activities in the city.”

“In particular, by affirming that the Commission may proceed against entities comprised in an undertaking for the full unmitigated penalty in addition to entities that directly participated in the contravention themselves, the Judgment further clarifies the law concerning the responsibility of undertakings and sends a strong message of deterrence to market players who may have the intention of participating in or facilitating activities that contravene the Competition Ordinance.”

“As the Court of Appeal points out in the Judgment, the principle of joint and several liability is a legal consequence that follows when the economic activity that infringed the competition law is committed by an undertaking made up of a number of natural or legal persons. Those operating as parent companies in corporate groups or head-contractors in subcontracting arrangements as members constituting the same undertaking should therefore be aware of their potential legal liabilities should their subsidiaries, related companies or subcontractors carry out anti-competitive activities. They should ensure that all members of their group or their subcontractors forming the same undertaking should abide by the Competition Ordinance and have appropriate compliance programmes or measures in place.”

By two decisions that were handed down in April 2020 and January 2021, the Tribunal respectively decided that three of the respondent contractors in connection with On Tat Estate (CTEA 2/2017), namely W. Hing Construction Company Limited, Cheung Yiu Fai Danny and Wong Tung Hoi (in partnership trading as Tai Dou Building Contractor), and Yeung Kwok Yee (trading as Wide Project Engineering & Construction Co), and two of the respondent contractors in connection with the On Tai Estate case (CTEA 1/2019), Fungs E&M Engineering Company Limited and Dao Kee Construction Company Limited, should be given substantial discounts on their penalties on the basis that they had subcontracted the relevant works to subcontractors and were not directly involved in the price fixing and market sharing arrangements. The Commission lodged an appeal against this part of the decisions with the Court of Appeal.

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