

Questions and Answers

1. How was the case discovered?

In early January 2023, the Commission noticed media reports that Midland Realty International Limited and Hong Kong Property Services (Agency) Limited (collectively “Midland”), as well as Centaline Property Agency Limited and Ricacorp Properties Limited (collectively “Centaline”) each issued internal memos in close timing from one another, directing their respective agents to observe a minimum net commission rate¹ of 2% in first-hand residential property transactions starting 1 January 2023. The Commission took the initiative to look into the matter.

2. What had Midland and Centaline done in this case?

According to the Commission’s investigation, senior management of Midland and Centaline met six times between October and December 2022 to discuss how to improve business environments and ways to reduce costs. At the sixth meetup in December 2022, they reached an agreement to fix the minimum net commission rate for the sale of first-hand residential properties in Hong Kong at 2%. In late December, Midland and Centaline each issued an internal memo in almost identical wording, directing their agents to observe the 2% rate starting 1 January 2023, unless director’s approval was obtained.

The Commission has reasonable cause to believe that such agreement amounts to serious anti-competitive conduct in the form of price-fixing, and/or exchange of competitively sensitive information, in contravention of the First Conduct Rule of the Ordinance.

3. How would the alleged anti-competitive conduct harm end purchasers of the properties?

Generally speaking, in Hong Kong, when a property developer has a first-hand residential property ready for sale, it will engage estate agencies to help find purchasers to buy the units. The property developer will pay a commission to the estate agencies for each successful sale, usually as a percentage of the price of the property. The commission percentage is decided or set by the developer.

Unlike the second-hand property market, end purchasers of first-hand residential property unit do not need to pay commission to the estate agencies. Frontline agents of the estate

¹ Net commission rate means the commission paid by property developers to the real estate agencies after deduction of all expenses including rebates to property buyers, set against the listed sale price of properties.

agencies compete by offering part of the commission received from the developer to end purchasers (known as rebates). As such, the actual amount that end purchasers need to pay for a first-hand residential property is the property price minus any rebate provided by the agent, and purchasers may engage the service of the agent providing the highest rebate.

The agreement between Midland and Centaline to fix the minimum net commission rate effectively fixes or restricts the maximum level of rebate their frontline agents could offer to the purchasers of such properties, which may result in home purchasers paying more than they would absent such an agreement.

4. The estate agencies involved did not fix the amount / rate of the rebate to end purchasers. Why would their conduct constitute price fixing?

On the basis that the commission paid by property developers to the estate agencies is solely determined by the property developers, in order to observe the minimum net commission rate of 2% per first-hand residential property transaction for the estate agency, the maximum level of rebate which a frontline agent could offer to an end purchaser would be fixed or restricted.

According to the First Conduct Rule of the Ordinance, price fixing is when competitors agree on pricing rather than compete against each other. Under the Ordinance, price refers to any price element in relation to the supply of products or services, including any discount or rebate. An agreement fixing rebate as a price element amounts to price fixing.

5. What is Leniency Policy? Who would be eligible to apply for leniency?

The Commission's Leniency Policy is designed to provide a strong and transparent incentive for undertakings and individuals who is engaged or involved in cartel conduct to stop their conduct and report the conduct to the Commission.

Under the current leniency framework, leniency is available for the first cartel member who:

Type 1. discloses its involvement in a cartel of which the Commission has not commenced an initial assessment or investigation, or

Type 2. provides substantial assistance to the Commission's investigation and subsequent

enforcement action of cartel conduct which the Commission is already assessing or investigating;

and goes on to meet all the requirements for receiving leniency.

The Commission will not commence proceedings before the Competition Tribunal against a successful leniency applicant (both Type 1 and Type 2) in relation to the conduct covered by the leniency agreement.

Under the Leniency Policy, leniency is not available to an undertaking or an individual that is the single ringleader of the cartel conduct or that have coerced other parties to engage in the cartel conduct.

6. What obligations does a successful leniency applicant need to fulfil under the leniency agreement reached with the Commission?

According to the Leniency Policy, a successful leniency applicant is required to fulfill a number of obligations under the leniency agreement including:

- (a) provide continuous cooperation to the Commission throughout the investigation and proceedings;
- (b) keep confidential all aspects of the leniency application and the leniency process; and
- (c) adopt a corporate compliance programme.

For Type 2 leniency applicants, in the event of follow-on action for damages being initiated in relation to the conduct covered by the leniency agreement, the Commission may issue an infringement notice to them, requiring them to admit liability for the contravention of the First Conduct Rule for the initiation of follow-on proceedings against them.