

Fact Sheet

About Distance Business Programme (“D-Biz”)

D-Biz was a funding scheme launched by the Innovation and Technology Commission (“ITC”) under the Government’s Anti-Epidemic Fund to support local enterprises to adopt IT solutions to continue their businesses and services during the COVID-19 epidemic. The Hong Kong Productivity Council (“HKPC”) was the Secretariat of the programme.

The programme was open for applications between 18 May 2020 and 31 October 2020. The funding ceiling for each IT solution is HK\$100,000, and the maximum aggregate funding granted to each applicant is HK\$300,000.

Under the programme, for applications that request non-subscription based IT solutions, i.e. those which are not readily available in the market and require compilation or integration by IT service providers, written price quotations from at least two service providers should be obtained. The service provider submitting the lowest conforming quotation should be selected unless otherwise justified.

All of the applications involved in the case initially sought funding for non-subscription based solutions, thus price quotations from at least two service providers were required.

Screening and investigation

In June 2020, the HKPC referred various complaints relating to D-Biz to the Commission. Upon considering the complaints received, the Commission requested HKPC to provide it with data of all D-Biz applications received at that time and conducted screening on almost 14,000 applications.

The screening exercise resulted in the detection of unusual bidding patterns involving Multisoft, BP/Noble, KWEK and Yat Ying¹, which indicate potential anti-competitive conduct.

Upon further reviewing the relevant application documents, the Commission discovered the following suspicious features:

- The same typo appeared in quotations submitted by BP and Yat Ying;
- BP/Noble, KWEK and Yat Ying used almost identical wordings and formatting of quotations; and
- Identical signatures appeared on the documents submitted by different companies.

As the Commission was satisfied that there is “reasonable cause to suspect” a contravention of a competition rule has taken place, it escalated the case to the investigation phase and exercised its compulsory investigatory powers under the Competition Ordinance to obtain documents and information, conduct interviews with relevant parties as well as conduct searches under a warrant on the

¹ Multisoft, BP/Noble, KWEK and Yat Ying refer to Multisoft Limited and its parent company MTT Group Holdings Limited; BP Enterprise Company Limited and Noble Nursing Home Company Limited; KWEK Studio Limited and Yat Ying Hong respectively.

subject premises.

Summary of Findings

- Multisoft and KWEK provided cover bids in a batch of D-Biz applications, and those cover bids were simply to make up the second quotation required and priced higher so as to ensure BP/Noble and Yat Ying would win; and
- BP/Noble and Yat Ying also provided cover bids to one another in another batch of D-Biz applications for the same purpose.
- As a result of the above arrangement, BP/Noble and Yat Ying would win the projects of their respective customers.
- There are altogether 189 D-Biz applications identified in which the four undertakings bid against each other, with approved government funding totalling around HK\$13 million.

The Commission's case

Based on the findings as summarized above, the Commission has reasonable cause to believe that the conduct amounts to serious anti-competitive conduct in the form of price-fixing, customer allocation, bid-rigging and/or sharing competitively sensitive information, in contravention of the First Conduct Rule of the Ordinance.

Remedies sought by the Commission

- A declaration that each of the undertakings has contravened the First Conduct Rule, whereas Ms Au Yeung, Mr. Fan and Mr. Tang are persons involved in the contravention;
- Orders for imposition of pecuniary penalties;
- Orders for the recovery of the Commission's costs of investigation and proceedings;
- Orders requiring each of the undertakings to adopt an effective compliance programme as the Tribunal considers appropriate; and
- Director disqualification order against Mr. Tang.

BP/Noble has agreed to admit liability and entered into a cooperation agreement with the Commission under the Commission's *Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct*.

Criminal element(s)

During the course of the Commission's investigation, the Commission has uncovered evidence suggesting that certain individual(s) may have also committed criminal offence(s) including forgery and

the provision of false or misleading documents or information. These matters have been referred to the Police for criminal investigation.

Maximum penalties of contravention of the Competition Ordinance

Maximum penalties of a contravention of the Competition Ordinance for an undertaking include a pecuniary penalty of up to 10% of the undertaking's annual Hong Kong turnover per contravention for a maximum period of three years.

The Competition Tribunal may also issue orders requiring individuals to pay a pecuniary penalty or disqualifying them from serving as director of a company for a period of up to 5 years.
