



# **Seminar: Getting Ready for the Full Implementation of the Competition Ordinance**

October 2015

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# Benefits of Competition

## Competition delivers

- Better prices
- Better product quality
- Enhancing economic efficiency
- Innovation and new products



# Why we need Competition Ordinance?

## Some business practices can harm competition

Businesses conduct

- By cooperating instead of competing to win customers
- Businesses (usually bigger businesses) may harm competition if they enter restrictive arrangements that harm competition
- Very large businesses with substantial market power may harm competition when acting alone



# Benefits to SMEs



## SMEs benefit

- Better products and prices benefit SMEs as consumers
- Economic growth increases the size of the pie SMEs compete for
- **SMEs** are likely to be **victims** of **anti-competitive conduct**  
The Competition Ordinance prevents companies from
  - abusing market power; and
  - creating entry barriers to the detriment of other businesses
- The Ordinance enables businesses to resist anti-competitive terms and constraints on their freedom to operate



# Four Things Not To Do

## Compete. Don't Cheat – The Four Don'ts

Regardless of their size, there are four things businesses should **never** agree with their competitors to do.

Price Fixing

Market Sharing

Output Restriction

Bid rigging

**CARTEL** agreements among **competitors**  
are forms of **Serious Anti-Competitive Conduct!**



# Four Things Not To Do

## Object or Effect?

- Most arrangements assessed on whether they have (or are likely to have) the **effect** of harming competition
- Some arrangements so consistently harmful said to have the **object** of harming competition – no need to assess actual or likely effects
- Commission expressly says **cartels have the object** of harming competition



# Four Things Not To Do Price Fixing

- Competitors should make price decisions independently
- Arrangements between competitors to raise prices or reduce discounts, however formed, harm competition

*“Let's sell our items for cost plus 10% to ensure market stability.”*

Just say **“No!”**





# Four Things Not To Do Price Fixing

- Compete with Integrity – Price fixing



# Four Things Not To Do

## Output Restriction

- Compete with Integrity – Output Restriction



# Four Things Not To Do Price Fixing



Bakers Association says  
"Add \$10".  
Members increase prices.  
**= CARTEL**

*"Let's sell our items for cost plus 10% to ensure market stability."*

Just say "No!"



# Four Things Not To Do

## Output Restriction

- Competitors should make decisions on what and how much they produce independently
- Arrangements between competitors to reduce volume or type of goods or services available in the market, however formed, harm competition

*“We should cut our production to address this oversupply.”*

Just say **“No!”**



# Four Things Not To Do

## Educational video - Cartel



# Four Things Not To Do Market Sharing

- Arrangements between competitors not to compete for each other's customers by name or geographic area, however formed, harm competition
- **Result:** Higher prices, reduced choice

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

Just say **"No!"**



# Four Things Not To Do Bid Rigging

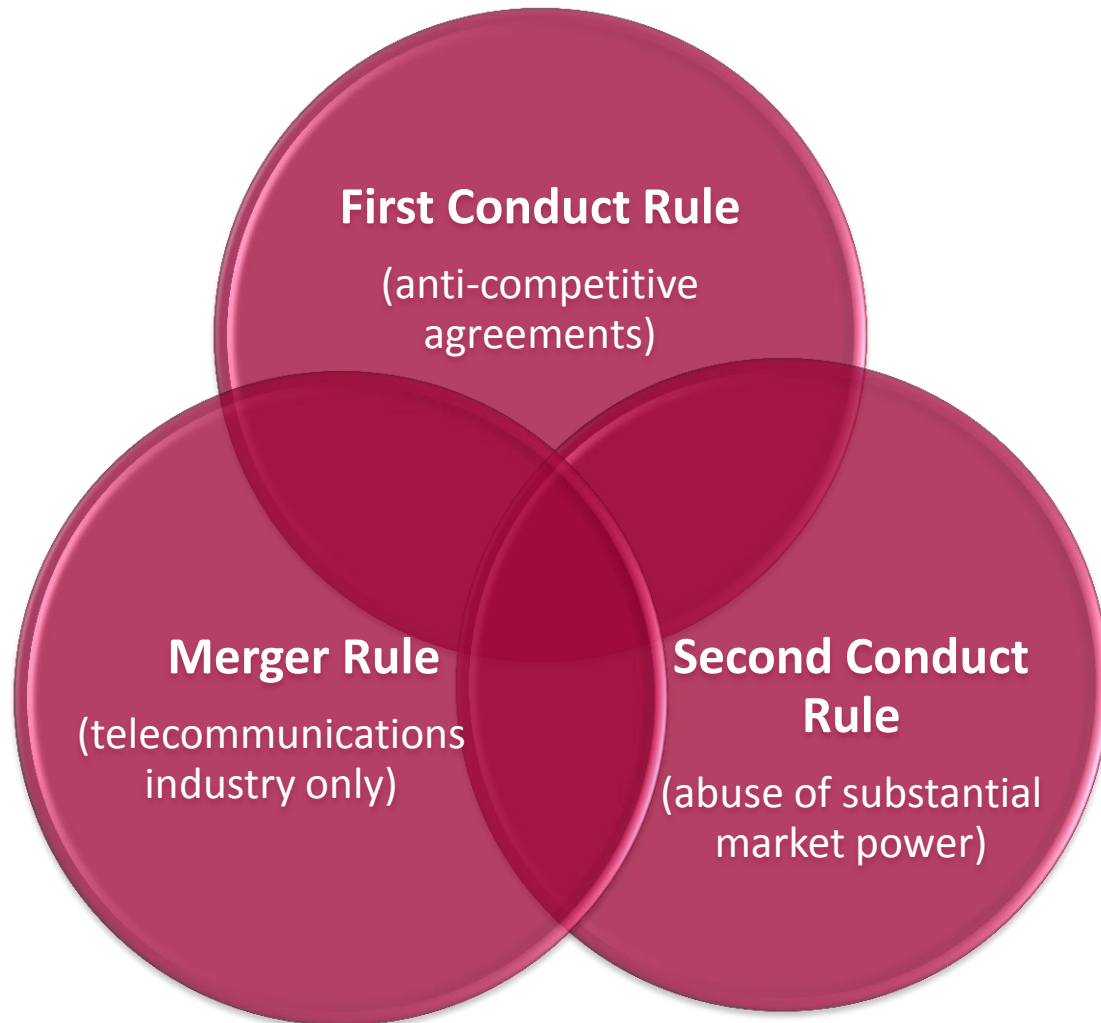
- Competitors should make decisions on what tenders to bid for, and what they will bid, independently
- Arrangements between competitors not to bid, withdraw bids or lose bids, however formed, harm competition

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

Just say **"No!"**



# 3 Competition Rules





# Other arrangements between undertakings

## Information Sharing

- Some information sharing harms competition process
- Businesses competing for customers rarely share commercial secrets with each other
- Competitors sharing sensitive information such as future price intentions with each other can be the equivalent of price fixing



# Other arrangements between undertakings

## Information Sharing

- ✓ Aggregated
- ✓ Historical data
- ✓ Information exchanged in public



Suppliers hired an independent market research company to collect weekly data

<http://fruitnet>

**Collated information of unsold product in last week**

Orange – 10

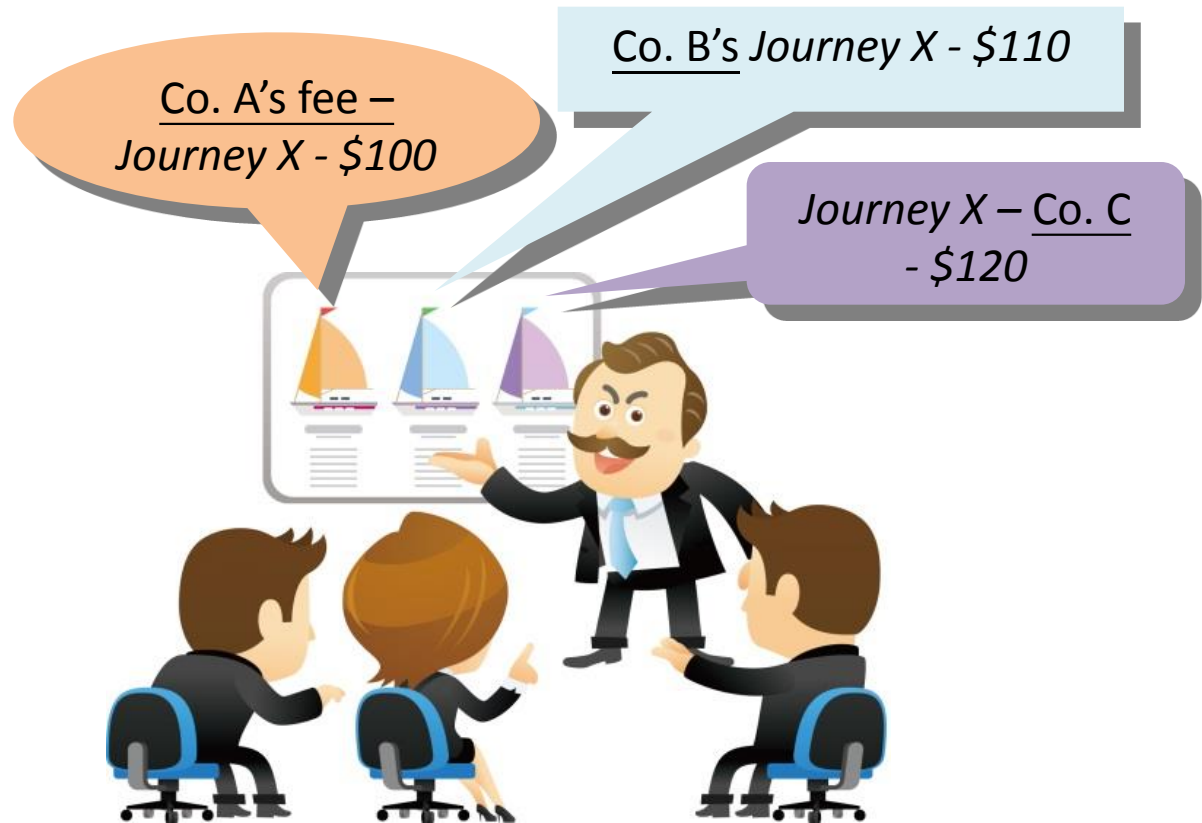
Banana – 20



# Other arrangements between undertakings

## Information Sharing

✘ Indirect form of price fixing



# Other arrangements between undertakings

## Joint Ventures

### Construction Tender

Requirements:  
Labour: 500 workers  
Capital: \$50M  
Former experience required



*“Let’s cooperate and  
make a joint-bid.”*



✓ Joint Venture  
= more competitive bidding process



# Other arrangements between undertakings

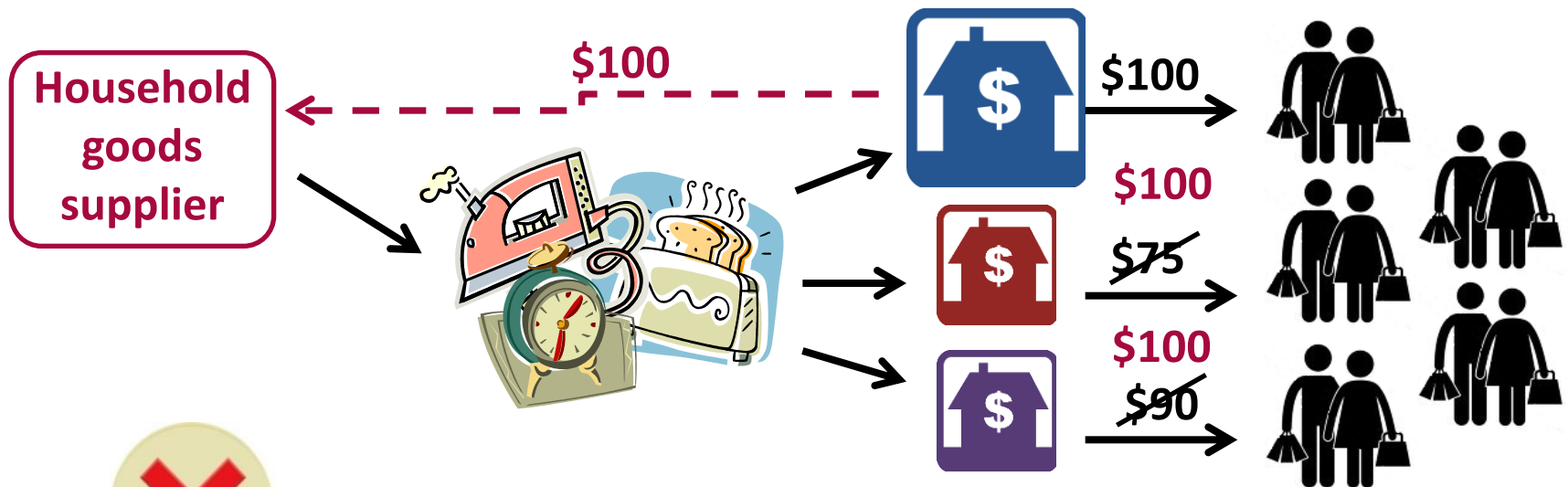
## Resale price maintenance

- Compete with Integrity –  
Resale price maintenance



# Other arrangements between undertakings

## Resale Price Maintenance



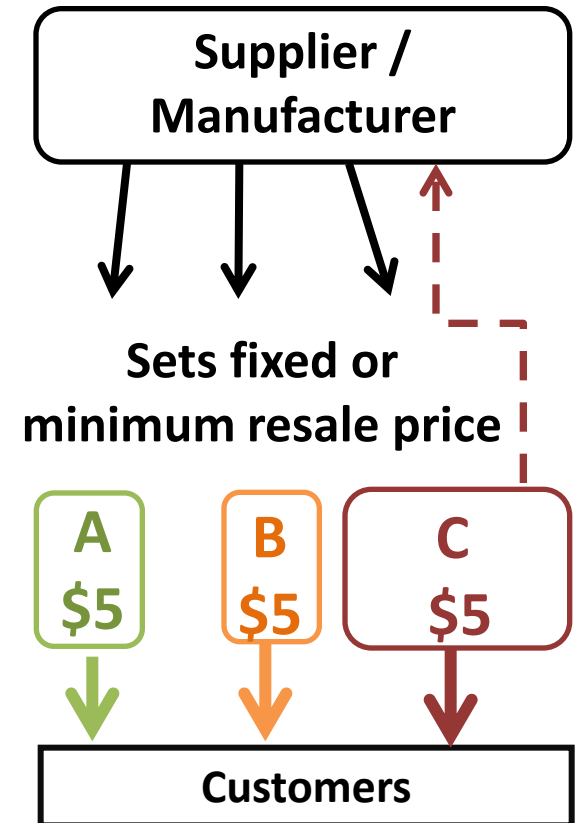
✘ Serious Anti-competitive Conduct



# Other arrangements between undertakings

## Resale Price Maintenance

- Resale Price Maintenance (RPM) is when a supplier sets a fixed or minimum resale price to be observed by the distributor when it resells the product
- Such arrangements undermine the other distributor's pricing freedom, restricting competition. RPM arrangements have an inherent potential to harm competition in Hong Kong.

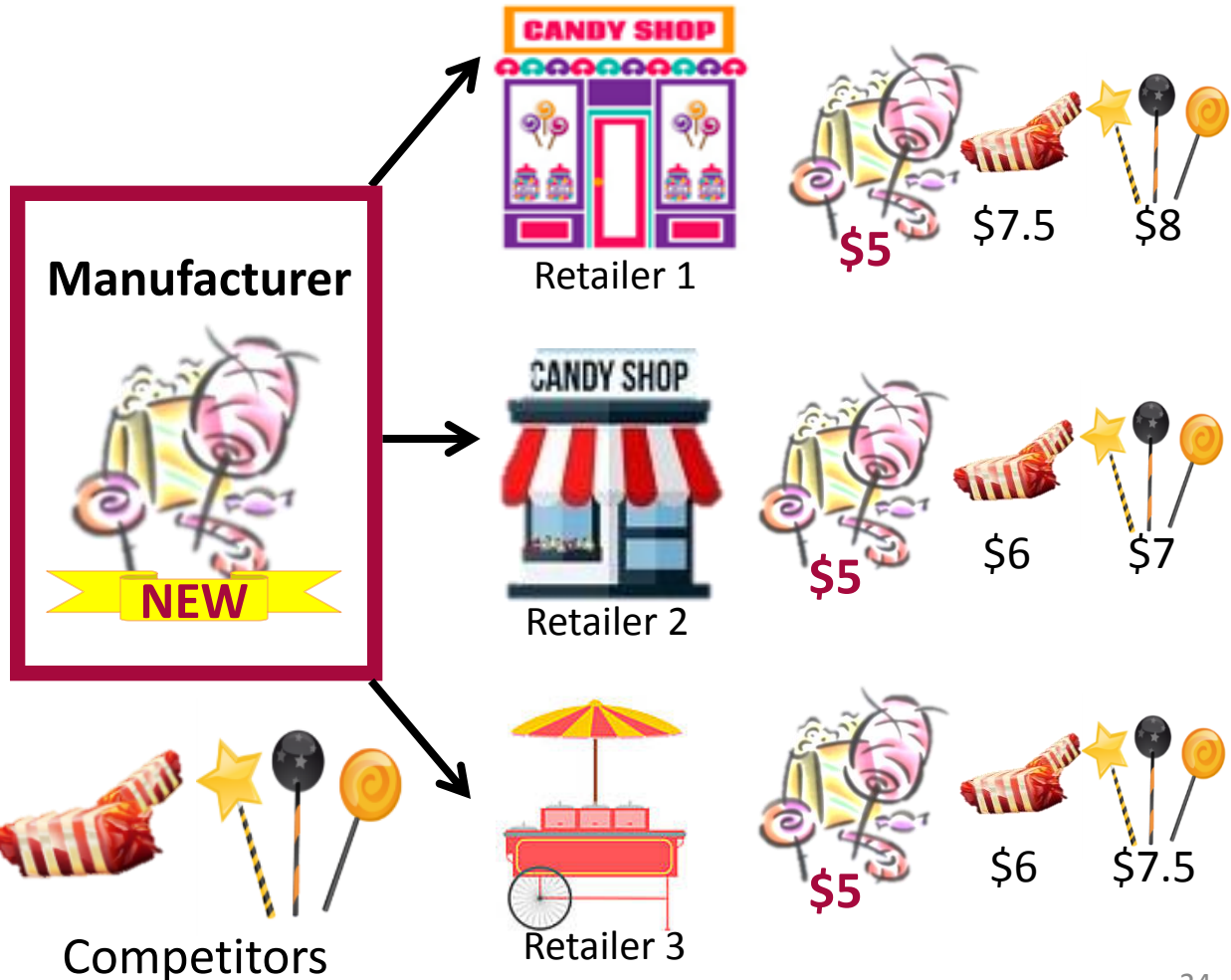


# Other arrangements between undertakings

## Resale Price Maintenance

**“\$5 a POP!”**

- ✓ Short introductory period





# The Second Conduct Rule

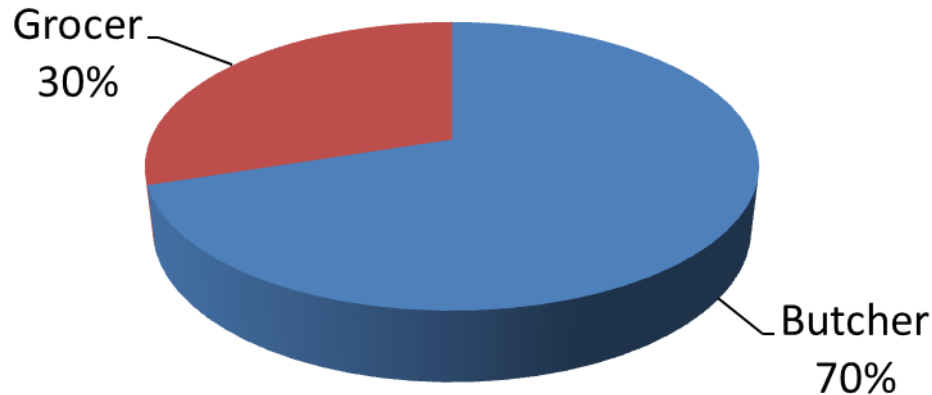
**Very large businesses with substantial market power may harm competition when acting alone**

- The Second Conduct Rule prohibits an undertaking with substantial degree of market power in a market from abusing that power by engaging in conduct which harms competition in Hong Kong
- Conduct of lesser significance exemption for an undertaking with turnover below HK\$40 million



# The Second Conduct Rule

**Siu Sai Wan Butcher Shop  
Market Share**



*“Prices in Siu Sai Wan are good. I should open a butcher shop in Siu Sai Wan!”*



Potential new butchers...

Market Share  $\neq$  **Market Power**



# SMEs are free to act alone

SMEs acting alone cannot harm competition



Can SMEs sell items below cost?

Yes - always!



Can SMEs bundle two of their own products for sale together?

Yes - always!



Can SMEs refuse to supply someone?

Yes - always!



# The Second Conduct Rule

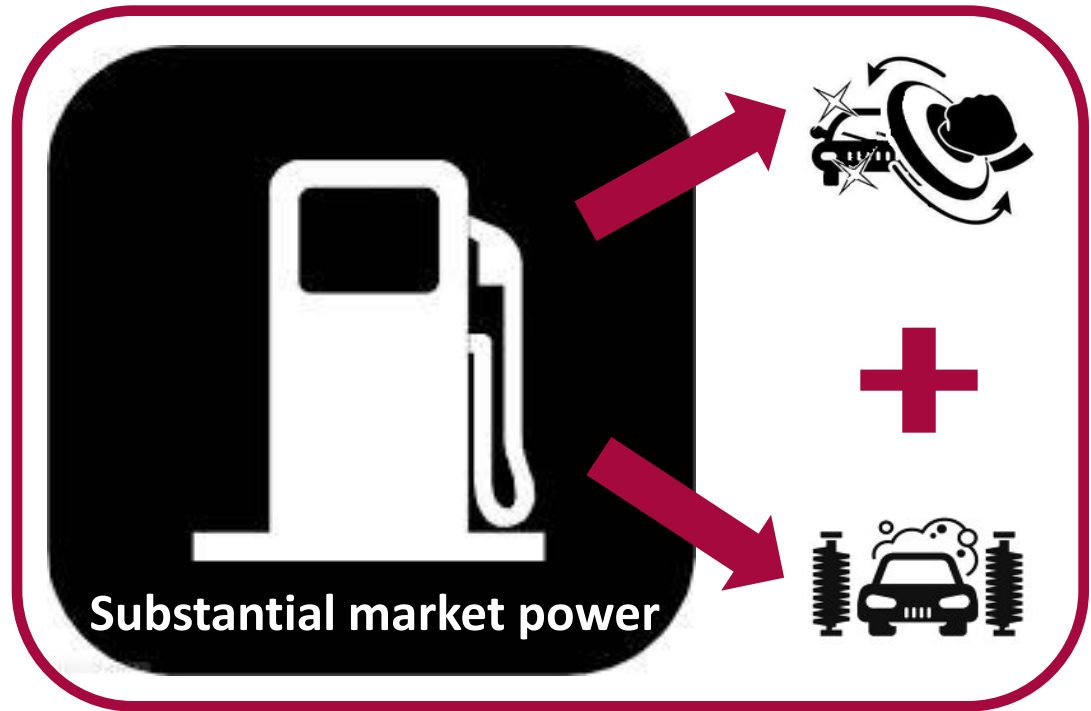
## Tying and Bundling

- Compete with Integrity – Tying



# The Second Conduct Rule

## Tying and Bundling



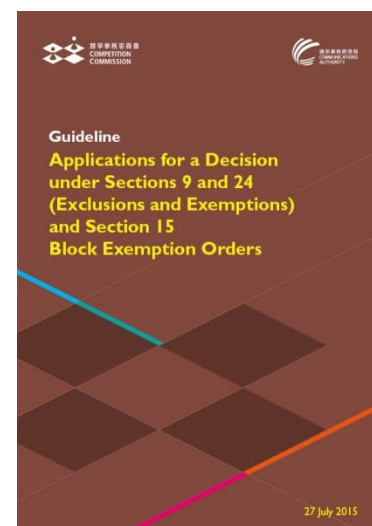
**Result:** Foreclose car wash and polish market, reduce consumers' choice



# Exclusion and exemption

The Ordinance contains several exclusions and exemptions

- Agreements enhancing overall economic efficiency
- Compliance with legal requirements
- Services of general economic interest
- Agreements and conduct of lesser significance
  - FCR – combined turnover <HK\$200 million;
  - SCR – turnover <HK\$40 million
- Mergers



Commission may issue

- Block exemption orders (on application of businesses or own initiative)
- Decisions on application of exemptions/exclusions to particular business circumstances



# Exclusion and exemption

- 1) Undertakings only need to consider whether an exemption applies in relation to conduct that is likely to prevent, restrict or distort competition (i.e. contravene the Ordinance)
- 2) Lesser significance exemptions do not apply to Serious Anti-Competitive Conduct including cartels (the four don'ts)
- 3) The efficiency or public interest exemption is unlikely to apply in the case of cartel conduct
- 4) Other likely exemptions depend on the facts, and the Commission encourages parties to approach the Commission on a confidential basis before applying for an exemption



# Enforcing the Competition Ordinance



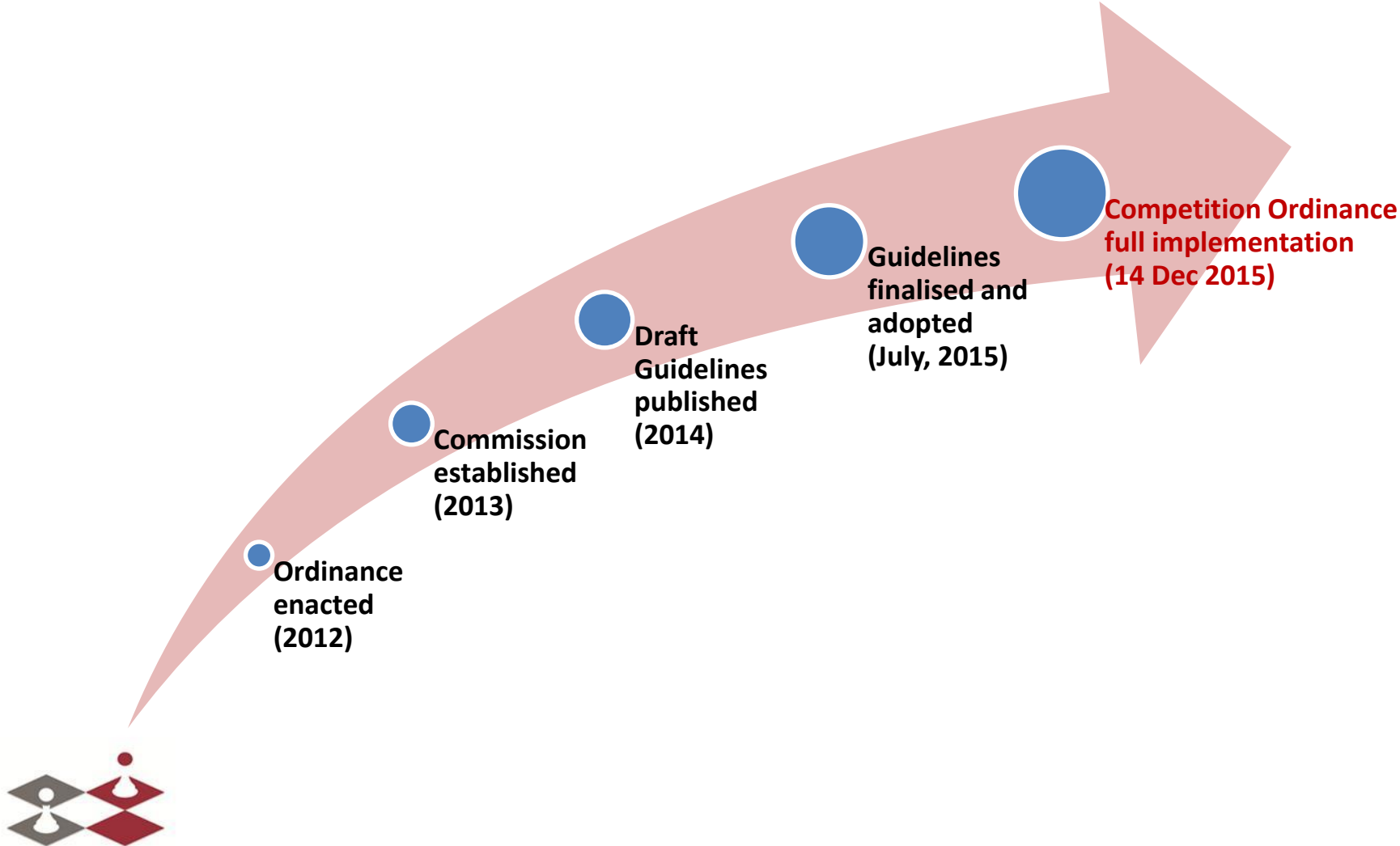
## Competition Tribunal

Investigation	Judgment
<ul style="list-style-type: none"><li>Investigate cases - Enforcement powers include search warrants, obtain documents and interview</li></ul>	<ul style="list-style-type: none"><li>Trial for infringement cases</li></ul>
<ul style="list-style-type: none"><li>Remedies - Commitments or proceedings in Competition Tribunal</li></ul>	<ul style="list-style-type: none"><li>Pecuniary penalty, disqualification order and other orders</li></ul>
<ul style="list-style-type: none"><li>Receive complaints and applications for exclusion/exemption</li></ul>	<ul style="list-style-type: none"><li>Handling applications for the review of reviewable determinations</li></ul>
<ul style="list-style-type: none"><li>Issue Block Exemption Order</li></ul>	<ul style="list-style-type: none"><li>Tribunal Rules being finalised</li></ul>





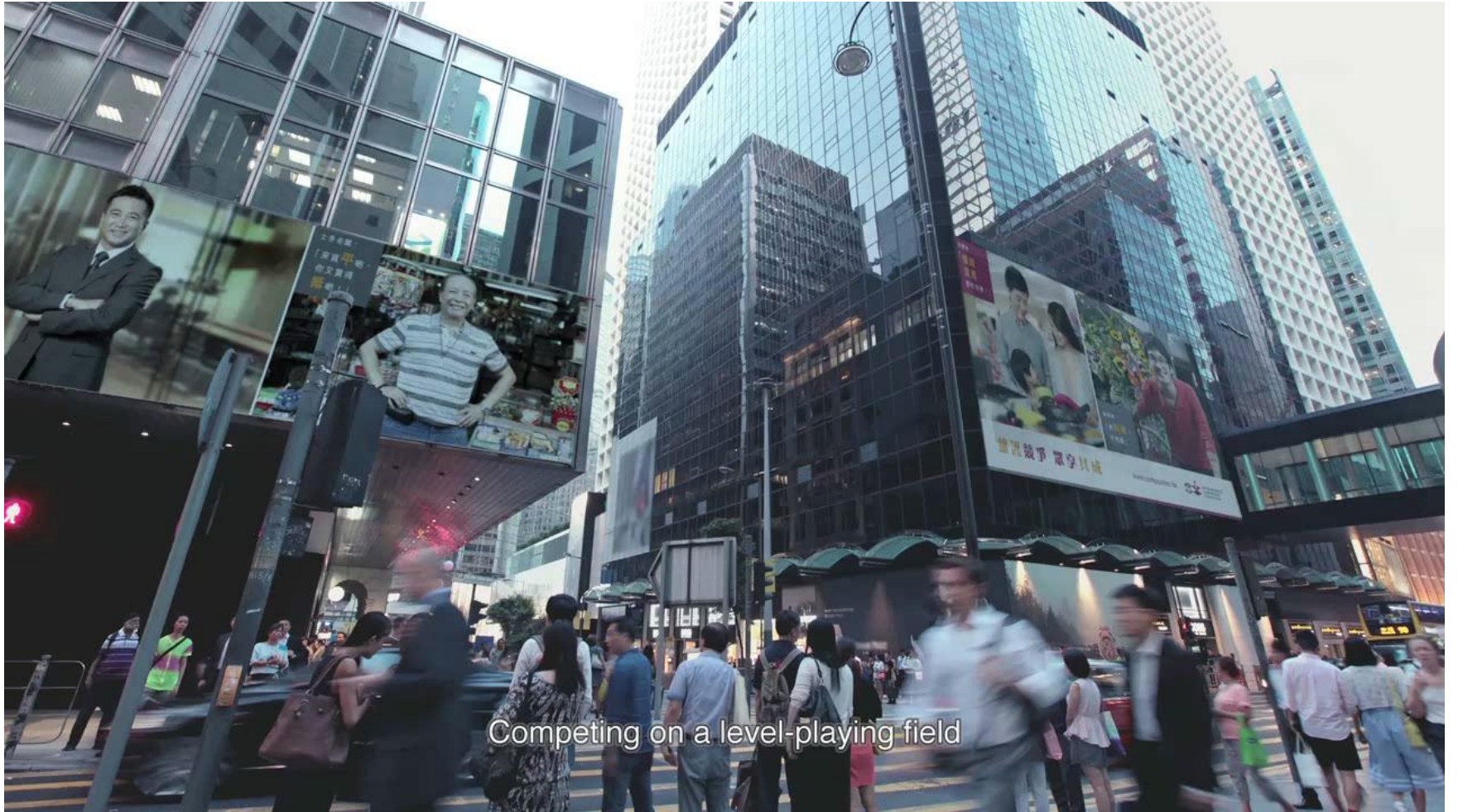
# Road to Full Implementation



# What's next?

- Commission will complete internal preparations in 2015
- Future publications:
  - Leniency Policy
  - Enforcement Priorities
  - Memorandum of Understanding between the Competition Commission and the Communications Authority
  - Other resources to help Undertakings and Associations be **ready, willing and able** to comply with the Ordinance







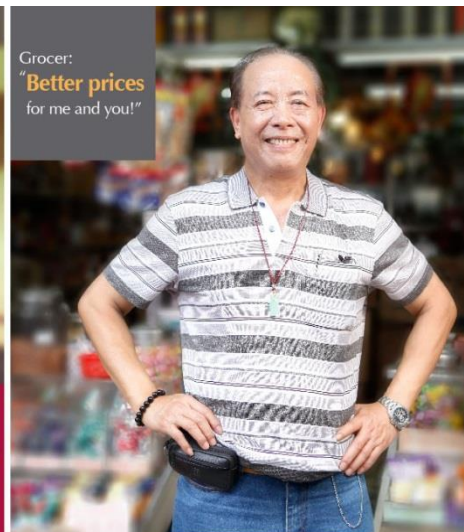
企業老闆：  
「有**競爭**，  
先有**進步**！」



士多老闆：  
「來貨**平**啲，  
你又買得  
**抵**啲！」



Business owner:  
“**Competition**  
creates  
**progress!**”



Grocer:  
“**Better prices**  
for me and you!”



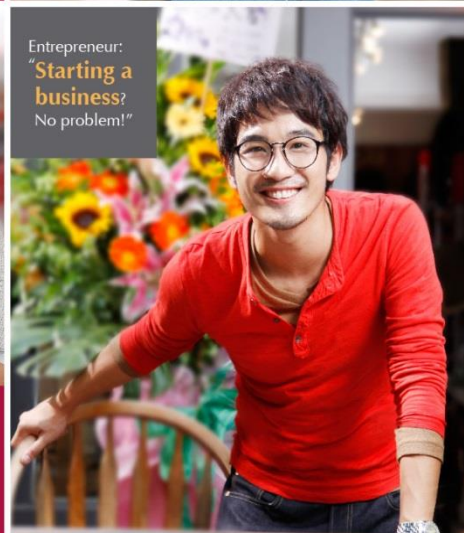
消費者：  
「**價錢**、  
**質素**，  
都有得揀！」



創業者：  
「想**創業**？  
冇問題！」



Consumer:  
“**Price** and  
**quality**, you  
make the call!”



Entrepreneur:  
“**Starting a**  
**business?**  
No problem!”

**維護競爭 眾享其成**

**Competition** delivers.  
The **prices** you expect. The **quality** you deserve.



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