

### On Tat Estate decoration contractors convicted of market sharing and price fixing (CTEA2/2017)



競爭事務委員會  
COMPETITION  
COMMISSION

Ten decoration contractors formed an illegal cartel in 2016 when providing interior decoration services at Phase One of On Tat Estate, a public rental housing estate in Kwun Tong, Kowloon. Instead of competing to win business, the contractors agreed to allocate customers and fix prices of their decoration packages. Upon receiving a complaint from a tenant, the Competition Commission (Commission) investigated and filed the case in the Competition Tribunal (Tribunal) in 2017. In May 2019, all ten contractors were found liable for contravening the First Conduct Rule of the Competition Ordinance (Ordinance). In April 2020, the Tribunal handed down the judgement on pecuniary penalties. Seven out of the ten respondents in this case have been made to pay the maximum pecuniary penalty allowable under the Ordinance. All of the respondents were also ordered to pay the Commission's costs of the proceedings.



#### What happened?



Developed by the Hong Kong Housing Authority (HA), Phase One of On Tat Estate ("Estate") consists of three residential blocks with a total of 2,582 units for about 5,700 residents from low-income families. Intake of tenants began in June 2016.

Pursuant to HA's Decoration Contractor System\*, ten decoration contractors on its "Reference List of Decoration Contractors" (Reference List) were allocated to execute decoration for the new tenants at the Estate. They were also able to set up an office in the Estate. However, the decoration contractors **were not** permitted to share the market for decoration works.

#### Market Sharing

The evidence before the Tribunal suggested that shortly before the intake of tenants began, the ten contractors drew lots during a worship ceremony and agreed amongst themselves as to which floors they would work on. The ten contractors were each allocated certain floors within each of the three blocks in the Estate.

As part of the intake process, each tenant was given a sticker which showed his/ her building name and unit. While the stickers were originally intended for the security guards to distinguish the tenants, they inadvertently became an important sign for the contractors to identify which tenant(s) "belonged" to them.

With the market sharing agreement in place, each of the ten contractors would only approach or accept business from those tenants that were allocated to them. Where a tenant wished to approach any of the other nine contractors, they would just say "no" and refer him/ her back to the "pre-assigned" contractor.

In short, the ten decoration contractors had "shared-the-pie" and the tenants were deprived of choices.

\*Under HA's Decoration Contractor System, tenants are free to appoint decoration contractors on the Reference List or any decoration companies in the open market. For details on HA's Decoration Contractor System, please visit:

<https://www.housingauthority.gov.hk/en/common/pdf/about-us/policy-focus/policies-on-public-housing/B12/B12.pdf>

## Price Fixing

The contractors also agreed to jointly produce flyers with pre-agreed prices for standardised decoration packages ranging from HK\$5,380 to HK\$36,880. These prices served as the final price for the tenants, and the agreement removed the potential benefit of price competition for the tenants. Even where the pre-agreed prices were used as a starting point for price negotiations between the tenant and the contractor, the agreement also impacted on what the final prices would have been had the ten contractors been competing with each other.



### How did this break the law?

Since the full implementation of the Competition Ordinance in December 2015, cartel activities are illegal in Hong Kong. Such activities include **market sharing** e.g. allocating tenants on different floors to different contractors, and **price fixing** e.g. “competitors” discussing and printing a flyer with jointly decided prices.

As these agreements had the object of harming competition, it did not matter that tenants in the Estate were free to hire contractors other than the ten decoration contractors allocated to the Estate, or did the work themselves; nor did it matter that in some cases the prices on the flyer were only used as a starting point for negotiation.

### What are the lessons?

- ✚ Businesses, big or small, should never agree with their competitors to share markets or fix prices. The Commission will investigate and, if warranted, take action against such conduct.
- ✚ There are serious consequences for a contravention of the Ordinance. Penalties include a pecuniary penalty of up to 10% of an undertaking’s annual Hong Kong turnover for a maximum period of three years. Parties involved may also face follow-on action for damages by those who have suffered loss and damage as a result of the conduct.
- ✚ While, in this case, the Commission only took enforcement proceedings against the ten contractors, enforcement actions may also be brought against individuals that are involved in the contravention. In addition to pecuniary penalties, individuals may also be subject to director disqualification for a period of up to 5 years.

### What you can do?

- ✚ Gain a better understanding of the Competition Ordinance by visiting the Commission website [www.compcomm.hk](http://www.compcomm.hk) or attend its seminars / workshops.
- ✚ Do not engage in any anti-competition conduct. Seek legal advice if you have any doubt about the propriety of your business conduct.
- ✚ Call the Commission at **3996 8010 for leniency or cooperation** if you think your business has been / is involved in anti-competitive conduct. You may be able to avoid a pecuniary penalty or be entitled to a reduction of it, and to resolve any liability short of having to go through a trial.
- ✚ Report any suspected cases to the Commission via its **reporting hotline 3462 2118**, by e-mail [complaints@compcomm.hk](mailto:complaints@compcomm.hk), or using the [online complaint form](#).