

競爭事務委員會
COMPETITION
COMMISSION

Webinar on Competition Ordinance

Date: 28 October 2020



Outline

1. Background and Overview
2. Key Elements of the Competition Ordinance and Red Flags of Anti-competitive Practices
3. The Commission's Enforcement Work
4. The Commission's Various Policies
5. Competition Law Case Studies
6. Q&A



1. Background and Overview



Background

- About 130 years ago, the US and Canada enacted antitrust laws to prohibit anti-competitive conducts.
- European countries also introduced competition law after WWII.
- Today, over 130 jurisdictions have enacted competition laws, including the Mainland, Japan, South Korea, India, Singapore, Malaysia and Indonesia.
- Hong Kong:
 - Sectoral competition regulation was introduced for the telecom and broadcasting industries in late 1990s
 - Competition Ordinance (Cross-sector):
 - Passed in June 2012
 - Full commencement since 14 December 2015



Two Cardinal Principles

“Protect competition and not competitors”



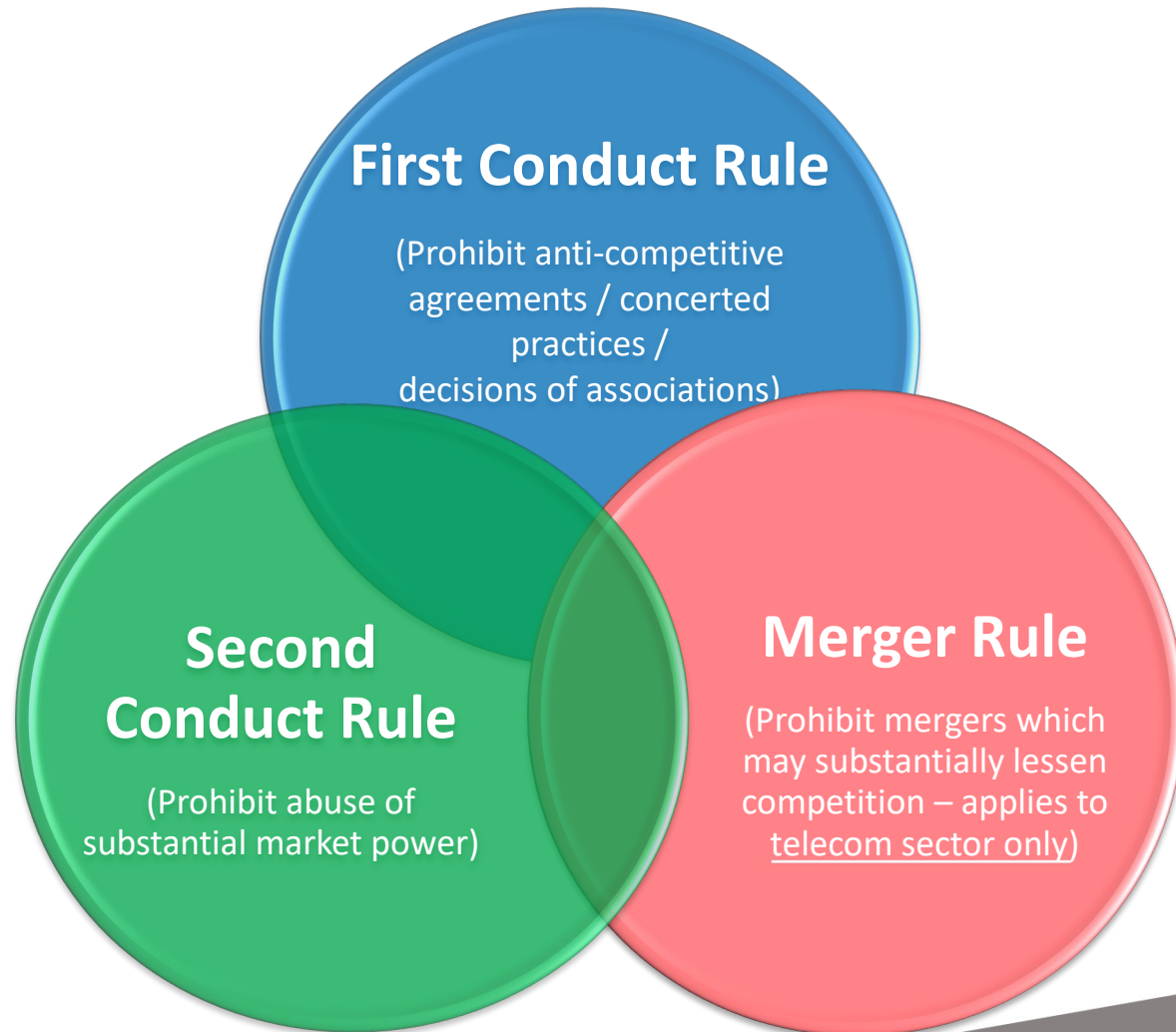
“Substance over form”



2. Key Elements of the Competition Ordinance (CO) and Red Flags of Anti-competitive Practices



Competition Rules under the CO (Cap.619)



The First Conduct Rule (FCR)



- Prohibits an **undertaking** from making or giving effect to an **agreement** if the agreement has the **object or effect** of harming competition in Hong Kong; also applies to **concerted practices**; and **decisions** of associations
- Prohibits all kinds of anti-competitive agreements, involving at least 2 undertakings



The First Conduct Rule (FCR)



- Applicable to:
 - “**Horizontal**” agreements (arrangements between competitors in a market)
 - “**Vertical**” agreements (arrangements between businesses at different levels of a supply chain)



The First Conduct Rule (FCR)



- Arrangements that have the “**object**” of harming competition:
 - “**Cartel**”: **price fixing, market sharing, bid-rigging and output restriction**
 - Regarded as **serious anti-competitive conducts** under the Ordinance



First Conduct Rule – *Price Fixing*

- Competitors agreeing to **fix, increase, lower, maintain or control the price** for the purchase or sale of goods or services
- May involve competitors agreeing upon **a specified price, a price range or a formula to calculate prices**
- “Price” includes any element of price including **discounts, rebates, promotions, credit terms etc.**
- **Regardless of the form of the agreement:** verbal, written, electronic, etc.
- Competitors should independently determine the prices of their goods or services

“Let's fix our profit margin at 10% to ensure market stability.”



“Compete with Integrity” video: Price Fixing



Red Flags of Price Fixing

- Quotes are much higher than expected
- Prices from different suppliers change in the same amount or percentage at the same time, with no relation to the underlying costs
- A new supplier's price is much lower than the usual suppliers
- Prices from different suppliers stay identical for long periods of time, especially when they were previously differentiated
- Discounts are eliminated, especially in a market where discounts were previously available



First Conduct Rule – *Market Sharing*

- Competitors collude to divide up markets by agreeing:
 - Not to sell to each others' **customers**
 - Not to compete in each other's **agreed territories/ geographical areas**
 - Not to compete in the **production or sale of certain products or services**
 - Not to **enter or expand into a market where another party to the agreement is already active**

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



“Compete with Integrity” video: [Market Sharing](#)



Red Flags of Market Sharing

- Competitors suddenly stop selling in a territory
- Competitors suddenly stop selling to a customer
- Competitor refers customers to other competitors
- Salesperson or prospective bidder says that a particular customer or contract “belongs” to a certain competitor



First Conduct Rule – *Bid-rigging*

- When two or more bidders secretly agree that they will not compete with one another for particular projects
- Bid-rigging can take a number of forms, for examples:
 - **Bid suppression**
 - **Cover bidding**
 - **Bid rotation**
 - Others: agree on **minimum bidding prices**, or agree that **the winning bidder will reimburse other bidders' bid costs**
- Competitors should make their tender decisions independently

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



Educational video: Cartel



Red Flags of Bid-rigging

- Suspicious signs in documents submitted
 - Bids containing identical wordings, particularly if the wordings are unusual
 - Bids containing the same handwriting or typeface or using identical forms or stationery
- Suspicious bidding/ winning patterns and behaviours
 - Regular bidders fail to bid on a tender they would normally be expected to bid for, but have continued to bid for other tenders
 - Bids that are suddenly withdrawn
- Suspicious pricing
 - Sudden and identical increase in prices by most bidders while there have been no substantial increase in costs
 - Bids with identical pricing either on a lump sum basis or line item basis (especially when continued over a period of time)
- Other red flags
 - Indications that the bidders have communicated with each other
 - Suspicious statements indicating that bidders may have reached an agreement



First Conduct Rule – *Output Restriction*

- Any form of arrangements between competitors to reduce the **volume** or **type** of goods or services available in the market
- Competitors should make decisions on what and how much they produce independently

“We should cut our output to address the problem of oversupply.”



“Compete with Integrity” video: Output Restriction



Non-Collusion Clauses

- Published by the Commission for procurers' reference and adaptation
- Including non-collusion clauses in tender documents: to alert tenderers of the prohibitions against, and consequences of cartel conducts
- Including non-collusion clauses in formal contracts: to provide contractual protections to procurers in the event that the tender process has been subject to collusion
- Procurers may consider adding other requirements, e.g. tenderers have to provide information regarding their shareholding structure and/or ultimate controlling entities as requested. This would help procurers better understand the identity of the tenderers



Model Non-Collusion Clauses and
Non-Collusive Tendering Certificate



Chinese:

<http://bit.ly/CCNonCollusionChn>

English:

<http://bit.ly/CCNonCollusionEng>



Non-Collusive Tendering Certificate

- For tenderers to sign as part of their tender submission to declare that the bid is developed independently
- For tenderers to commit to disclosing sub-contracting arrangements relating to the tenders
- Where the bid is submitted jointly by two or more parties (e.g. multiple persons or companies acting in a joint venture), all such parties should sign the certificate



Other anti-competitive conduct under FCR

Information Exchange

- Not all information exchange is anti-competitive
- But the exchange of commercially sensitive information among competitors (whether directly or through a third party) such as information about their **future prices, pricing strategies, discounts, or costs** may have the same effect as price fixing
- Exchange of historical, aggregated and anonymised data, as well as publicly available information is less likely to give rise to competition concerns



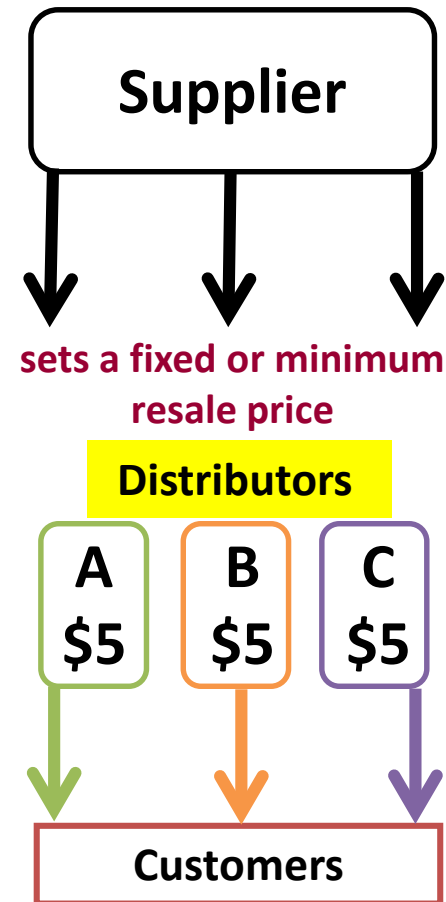
“Compete with Integrity” video: Information Exchange



Other anti-competitive conduct under FCR

Resale Price Maintenance (RPM)

- RPM occurs when the supplier of a product establishes **a fixed or minimum resale price** to be observed by the distributors
- RPM is likely a contravention of the First Conduct Rule of the Ordinance unless there is a sound economic efficiency justification



The Second Conduct Rule (SCR)



- Prohibits undertakings with **substantial market power** in a **market** from **abusing** that power by engaging in conduct which has the **object or effect** of harming competition in Hong Kong
- Relevant *market*:
 - Two dimensions:
Product and **Geographic**
 - Substitutability from the perspective of buyer



The Second Conduct Rule (SCR)



Substantial market power:

- Factors to consider in determining whether an undertaking has substantial market power in a market:
 - Market share of the undertaking
 - Countervailing buyer power
 - Barrier to entry/expansion



The Second Conduct Rule (SCR)



- *Examples of anti-competitive conduct under SCR:*

(1) Predatory pricing

- Charging below its own cost, making a loss for a sufficient duration to force one or more undertakings out of the market and/or to otherwise “discipline” competitors

(2) Refusals to deal

- Refusing to supply an input to another undertaking, or is willing to supply that input only on objectively unreasonable terms



3. The Commission's Enforcement Work



A Prosecutorial Model



Investigation

- Receives complaints
- Investigates cases. Range of enforcement powers – e.g. onsite inspections, requests for documents and interviews
- Can resolve cases by coming to agreement with parties under investigation or applying to Tribunal

Exclusions and Exemptions

- Handles applications for decision on exclusion/exemptions
- Issues block exemption orders – of own volition or following application



Investigation Powers: S.41 and S.42 Notices

- **S. 41 CO** – Request for documents and/or information
 - Reasonable cause to suspect that a person has or may have possession or control of relevant documents/information or may otherwise be able to assist the Commission in its investigation
 - Use S.41 Notices which relate to any matter it reasonably believes to be relevant to an investigation from any person, e.g. subject under investigation, their competitors, suppliers, customers and any other parties
- **S. 42 CO** – Request for attendance before the Commission to answer questions
 - At a specified time and place
- **Both S.41 and S.42 Notices:**
 - Can be used at any stage of the Investigation Phase
 - May be issued to same party/person more than once
 - Non-compliance to S.41 and S.42 Notice is a contravention of S.52 CO



Investigation Powers: *S.48 Warrant*

- **S. 48 CO – Enter and search premises under warrant**
 - Issued by a judge of the Court of First Instance
 - Will exercise S.48 power in below circumstances (not exhaustive):
 - a) Secretive conduct
 - b) Documents/information may be destroyed or interfered should the Commission seek them through other means
 - c) Commission has been unsuccessful in obtaining specific or categories of documents/information OR suspects non-compliance

- During the search, Commission officers will:
 - search, copy and/or confiscate relevant documents and equipment that are relevant to the investigation;
 - seek explanations from individuals present at the premises about any documents which may appear to be relevant



Enforcement Tools & Remedies



Remedial goals:

- Swift end to illegal conduct
- Undo any harm caused
- Encourage effective compliance
- Deterrence
- Consistency
- Proportionality



Competition Tribunal



Adjudication by the Competition Tribunal

- Determines contraventions of the Ordinance
- Power to impose penalties (fines, director disqualifications) and other orders
- Hears review of “reviewable determinations”
- Tribunal Rules govern procedures



Pecuniary Penalty

- After investigation, the Commission may apply to the Tribunal for a **pecuniary penalty** to be imposed on any person it has reasonable cause to believe has contravened a competition rule; or has been involved in a contravention of a competition rule
 - “*Has contravened a competition rule*”: Primary contraveners
 - “*Has been involved in a contravention of a competition rule*”: Secondary liability (s.91 CO)
- Statutory maximum in relation to **conduct that constitutes a single contravention**:
 - 10% of the turnover of the undertaking concerned in Hong Kong for each year in which the contravention occurred; or
 - If the contravention occurred in more than 3 years, 10% of the turnover of the undertaking concerned for the 3 years in which the contravention occurred that saw the highest, second highest and third highest turnover



Other Orders

- If the Tribunal is satisfied that a person (includes undertakings and individuals) **has contravened, or has been involved in a contravention** of a competition rule, it may make any order it considers appropriate against that person, including:
 - Declaration of contravention - relevant for follow-on proceedings
 - Director disqualification
 - Compensation
 - Restitution
 - Injunctions etc.

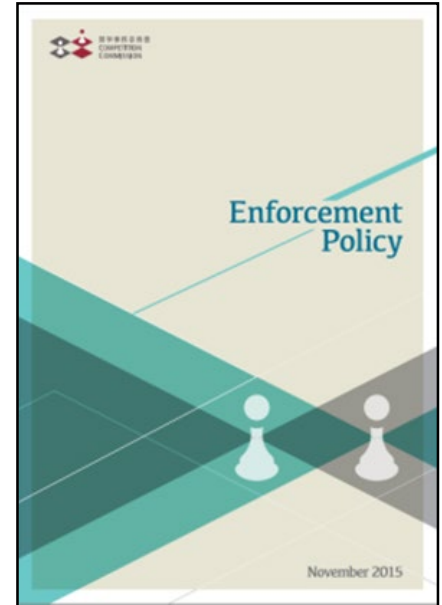


4. The Commission's Various Policies



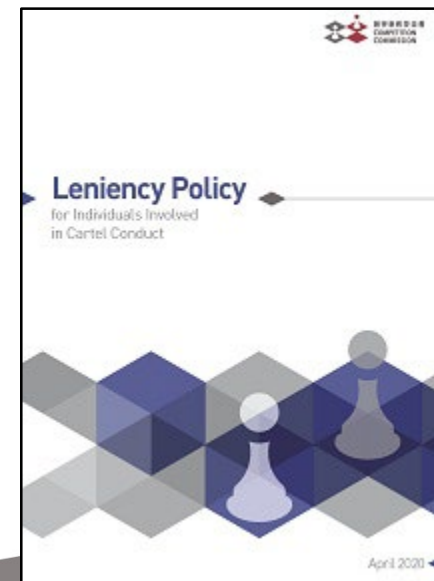
Enforcement Policy

- Commission will target anti-competitive conduct that is clearly harmful
- Priority given to following types of conduct:
 - cartel conducts (price fixing, market sharing, output limitation and bid rigging)
 - other agreements contravening First Conduct Rule causing significant harm to competition in HK and
 - abuses of substantial market power involving exclusionary behaviour by incumbents
- In addition to taking action against undertakings, the Commission may also prioritise taking action against:
 - associations of undertakings; and/or
 - officers (as defined in the CO), including directors and managers of undertakings



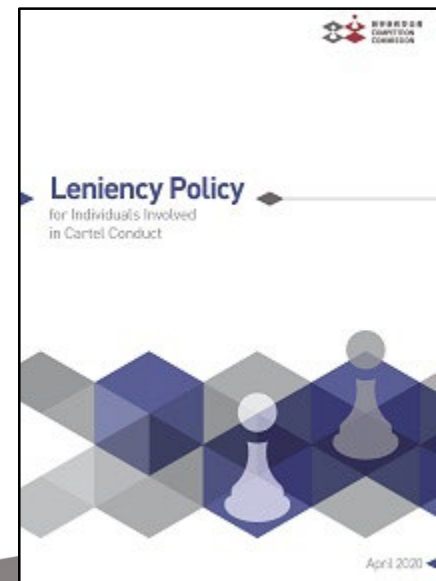
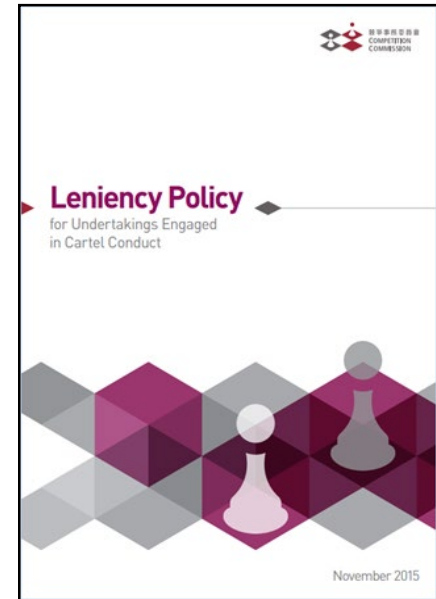
Cartel Leniency Policies

- To provide a strong, transparent, and predictable incentive for an undertaking who is engaged or involved in cartel conduct to stop their conduct and report the conduct to the Commission
- Key elements of Leniency Policy for Undertakings:
 - Only in respect of **cartel conduct** (First Conduct Rule)
 - **Type 1** and **Type 2** Leniency
 - Leniency extends to **current officers / employees** of the cartel member
 - **Excludes ringleader/coercer**
 - The successful applicant will sign a **leniency agreement** with the Commission and fulfil the conditions and obligations therein
- Leniency Policy for individuals introduced in April 2020



Benefits of Leniency Policies

- The Commission **will not** commence proceedings in the Tribunal against the **first** undertaking or individual who self-reports the cartel conduct to the Commission and meets all other requirements for receiving leniency
- This includes **not** seeking a pecuniary penalty or for an order declaring that the successful leniency applicant has contravened the Ordinance
- Employees and officers of an undertaking that obtains leniency will also be protected from proceedings if they cooperate with the Commission's investigation



How to Apply for Leniency

- Call the Leniency Hotline at **+852 3996 8010** or
- E-mail to: Leniency@compcomm.hk
- The Leniency Hotline is answered between **8am to 6pm** Hong Kong time, **Mon to Fri** (excluding public holidays)



Cooperation and Settlement Policy

- **Undertakings** engaged in **cartels** which **do not benefit from the Leniency Policy**
- May choose to admit their wrongdoings and cooperate with the Commission in its investigations and resulting proceedings
- In return the Commission will offer a discount of **up to 50% off** the pecuniary penalty it would otherwise recommend to the Competition Tribunal
- Entering into a **Cooperation Agreement**
- Jointly apply to for a Consent Order on the basis of a joint statement of agreed facts



Benefits of Cooperation

- **Benefits to the undertakings:**
 - **Recommendation for a reduction in pecuniary penalty**
 - ❖ RPP reduction: **Band 1:** 35-50%, **Band 2:** 20-40%, **Band 3:** up to 25%
 - **Protection for employees, officers, partners and agents**
 - **Other collateral benefits: e.g. reduced reputational harm, saving litigation costs**
- Benefits are **conditional on full and continuous cooperation** in the investigation and subsequent litigation by the undertaking and its employees
- The **order** and **timing** of cooperation determines the amount of benefits (reduction in RPP) available



5. Competition Law Case Studies



Cases in the Competition Tribunal

IT bid-rigging (CTEA1/2017)

- **March 2017:** The Commission commenced proceedings in the Tribunal, alleging that 5 IT companies engaged in **bid-rigging** in relation to a tender issued by the Hong Kong Young Women's Christian Association for the supply and installation of a new IT system
- **May 2019:** The Tribunal ruled that 4 of the companies have contravened the First Conduct Rule of the Competition Ordinance



Source: *The Standard*



Cases in the Competition Tribunal

Market sharing & Price fixing - On Tat Estate (CTEA2/2017)

- **August 2017:** The Commission brought a case to the Tribunal, alleging 10 decoration contractors for suspected **market sharing and price fixing** when providing renovation services at Phase 1 of On Tat Estate in Kwun Tong
- **May 2019:** The Tribunal ruled that all 10 decoration contractors had contravened the First Conduct Rule of the Competition Ordinance
- **April 2020:** The Tribunal ruled that 7 out of the 10 Respondents had to pay the maximum pecuniary penalty allowable under the Ordinance. All of the Respondents were also ordered to pay the Commission's costs

Watchdog tackles 10 firms over estate price-fixing

Sophie Hui

Ten construction and engineering companies were hauled before the Competition Tribunal for alleged price-fixing when renovating 800 flats at a Kwun Tong public housing estate.

The renovations were done at Phase 1 of On Tat Estate on more than 800 flats and were completed in June last year.

In the second criminal proceedings by the tribunal, Competition Commission chairwoman Anna Wu Hung-yuk put her foot down on "conduct which is particularly egregious when the people directly affected belong to low-income groups such as the residents of the relevant public housing estate in the present case."

The commission is seeking "pecuniary penalties and a declaration" that each

Renovations were carried out at On Tat Estate, Inset, Anna Wu, SING TAO

of the 10 companies have contravened the competition law.

Brought before the tribunal are W Hing Construction, Sun Spark Construction, Mau Hang Painting & Decoration, Tai Dou

Building Contractor, Kam Kee Machine Electrical Iron Works, Hip Yick Construction, Tai Wah Civil Engineering, Wai Sun Iron & Decoration, Wide Project Engineering & Construction and Luen Hop Decoration Engineering.

The firms allegedly made a market-sharing agreement on supplying decoration works to tenants of Chun Tat House, Oi Tat House and Shing Tat House in the public estate. Each of the firms allocated the works for four floors of each of the three houses, and would refer businesses to the "allocated" company if tenants from other floors asked.

They also allegedly reached a price-fixing agreement to make sure they charged the same prices for providing the services.

The commission said the 10 companies contravened the First Conduct Rule of the Competitive Ordinance by "making and giving effects to a market-sharing agreement and a price-fixing agreement," which are two of the four serious anti-competitive conducts under the ordinance. The other two are fixing or eliminating the supply of goods and bid rigging.

Wu said the alleged malpractice of the 10 companies had greatly affected the residents of the estate, while market sharing and price-fixing "are serious anti-competition practices which lead to reduced consumer choices and noncompetitive high prices, hurting consumers, other businesses and the economy as a whole."

The commission filed the Originating Notice of Application yesterday, triggering the start of proceedings at the same time in the tribunal.

This is the second case that the commission has taken firms to the Competition Tribunal after the Competition Ordinance came into effect in December 2015 to promote competition and prohibit anti-competitive practices.

The commission took its first case to the tribunal in March, in which five information technology companies were allegedly involved in bid rigging for a new server system for an NGO.

By the end of last month, the commission had received more than 2,300 complaints and inquiries from different sectors under the ordinance.

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Source: *The Standard*



Cases in the Competition Tribunal

Market sharing & Price fixing – King Tai Court (CTEA1/2018)

- **September 2018:** The Commission commenced proceedings in the Tribunal against 3 decoration contractors and 2 individuals for suspected **market sharing and price fixing** when providing renovation services at King Tai Court in San Po Kong
- **July to August 2020:** First case settled by all Respondents' admissions of liability before the Tribunal, which ruled that all parties had contravened or been involved in the contravention of the First Conduct Rule
- The Commission has made recommendations on the sanctions to the Tribunal and a decision is expected to be handed down

Hong Kong / Law and Crime

Construction companies 'made turf deal' on subsidised housing estate, according to Hong Kong's competition watchdog

Competition Commission has accused Kam Kwong Engineering Company, Goldfield N & W Construction Company and Pacific View Engineering as well as two directors of distorting fair competition in a way that amounted to 'serious anti-competitive conduct'



Chris Lau and Alvin Lum
Published: 11:02pm, 6 Sep, 2018

Why you can trust SCMP



Source: SCMP



Cases in the Competition Tribunal

Market sharing & Price fixing – On Tai Estate (CTEA1/2019)

- **July 2019:** The Commission commenced proceedings in the Tribunal, alleging 6 decoration contractors and 3 individuals for suspected **market sharing and price fixing** when providing renovation services at Phase 1 of On Tai Estate in Kwun Tong
- **October 2020:**
 - The case was settled by admissions of liability before the Tribunal by all 9 Respondents
 - The Tribunal found that all Respondents had contravened or been involved in the contravention of the First Conduct Rule
- Hearings to determine the sanctions will be held later on



Source: SCMP



Cases in the Competition Tribunal

IT cartel case (CTEA1/2020)

- **January 2020:** The Commission commenced proceedings in the Tribunal against an IT company and its director for **exchanging competitively sensitive information** with a co-bidder regarding their intended quotations in a bidding exercise for the procurement of IT services organised by the Ocean Park Corporation in 2017
- The Commission has reasonable cause to believe that such exchange of future price information amounts to **price fixing**, in contravention of the First Conduct Rule
- First proceedings resulting from a successful leniency application
- First infringement notice issued (to one of the IT companies involved)

COURTS

IT firm in hot water over Ocean Park contract bid

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The antitrust watchdog yesterday accused an IT company and its director of colluding with other businesses when bidding for a project at Ocean Park.

The Competition Commission said yesterday that it had started legal proceedings against Quantr Ltd and its director, Peter Cheung Man-kit. The watchdog accused the firm and its

co-bidder, which it did not name, of exchanging sensitive information related to their intended quotations to coordinate who would win the procurement of IT software services for the theme park.

It said the case was discovered after the co-bidder came forward and asked to be treated with leniency by the commission.

Under their "leniency agreement", the commission said it would not take action against the firm or its employees, in exchange for their cooperation.

"These are the commission's first enforcement proceedings resulting from a successful leniency application, which is an important enforcement milestone," Brent Snyder, the commission's CEO, said in a statement. "The outcome is likely to be litigated proceedings before the Competition Tribunal."

The case was the fifth filed by the watchdog at the Competition Tribunal since antitrust regulations went into effect in late 2015. Last year, it won its first two cases.

Commission documents revealed that a former employee of the software's original supplier, Nintex Proprietary, had directed the firm's two resellers – Quantr and the whistle-blowing company – to communicate with each other before submitting their bids to Ocean Park in 2017. The two resellers did so, and Quantr eventually won the bid.

The amount of money involved was not disclosed.

The *Post* reached out to Ocean Park for comment.

Source: SCMP



Cases in the Competition Tribunal

Textbook cartel case (CTEA2/2020)

- **March 2020:** The Commission brought a case to the Tribunal, alleging that 3 textbook suppliers and 1 individual engaged in **price fixing, market sharing,** and/or **bid-rigging** in relation to the sale of textbooks to students attending primary and secondary schools in Hong Kong



Source: SCMP



Other Cases

(1) The Commission accepts commitments offered by online travel agents (OTAs)

- **March 2020:** The Commission commenced a consultation on the commitments offered under section 60 of the Ordinance by 3 major OTAs
- The proposed commitments aim to address the Commission's concerns over certain clauses in their agreements with accommodation providers in Hong Kong
- Such clauses require accommodation providers to always give the OTA the same or better terms as those they offer in all other sales channels, as regards room prices, room conditions and/or room availability
- **May 2020:** The Commission accepted the commitments, resulting in removal of these clauses



Source: SCMP



Other Cases

(2) The Commission consults on proposed commitments from Hong Kong Seaport Alliance

SHIPPING

PORT ALLIANCE BIDS TO EASE WATCHDOG FEARS

Group of operators at Kwai Tsing terminal vows to cap prices to address competition concerns, but industry stakeholders say reforms insufficient

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A powerful alliance that controls much of the city's major container port has released a list of proposed remedies aimed at addressing concerns raised last year by Hong Kong's competition watchdog, though industry stakeholders yesterday said the reforms did not go far enough.

Following a 17-month probe into suspicions of a cartel, the Competition Commission reiterated yesterday that the formation of the Seaport Alliance, a contractual joint venture formed by four of the five container port operators at Kwai Tsing Container Terminals in the New Territories, had indeed led to competition concerns in areas such as shipment between Hong Kong and the mainland, and logistics services within the local port.

In response, the alliance offered a set of proposed remedies to ensure a level playing field over the coming eight years, with the commission appointing a trustee to scrutinise compliance.

"The commission considers that the proposed commitments are appropriate to address its concerns, and it therefore proposes to accept them," the watchdog said in a statement.

Set up in January 2019, the alliance operates 23 berths across eight terminals at the Kwai Tsing port, with a 95 per cent share of the market, leaving the sole remaining operator – DP World – to administer one berth at Terminal 3.

The alliance had aimed to utilise the operational, commercial and financial resources of different port operators at the container terminal to raise its competitiveness on the world market after a decline in business in recent years. Hong Kong was ranked the world's eighth-busiest port in 2019, according to the Marine Department, down from seventh in 2018. It lost its long-held crown as the world's busiest in 2004.

The commission said the alliance had not caused any concerns when it came to international transshipment and barge transshipment markets in East Asia and the Pearl River Delta, where alternative suppliers of shipping lines are available.

However, anticompetitive behaviour had arisen from services relating to the loading and unloading of ocean-going vessels, and of trucks running between the city and the mainland, it said.

"The parties are therefore unlikely to be subject to effective competitive constraint in this market, and could potentially increase charges, or reduce service

levels, to the detriment of their customers," the commission said. "The alliance is likely to give rise to competition concerns with regard to the provision of various services at Kwai Tsing to customers other than the shipping lines, such as truck operators and freight forwarding companies, by enabling the parties to raise charges for these services."

The alliance includes Hongkong International Terminals (HIT), Cosco-HIT Terminals, Asia Container Terminals and Modern Terminals. Tycoon Li Ka-shing's Hutchison Port Holdings owns HIT, while Cosco-HIT and Asia Container Terminals are associates, and Modern Terminals is mostly owned by Wharf Holdings.

To address the concerns, the alliance proposed capping its charges at last year's prices for services to shipping lines for shipment between the city and the mainland. It proposed providing a minimum service level for gate access to the Kwai Tsing terminal and turnaround time for truck services at the port. It suggested those proposals, among others, remain in place for eight years.

The alliance also maintained its joint planning and allocation of berths had boosted the port's efficiency, halving the number of trips required to transfer goods between vessels.

However, Hong Kong Shippers' Council chairman Willy Lin Sun-mo said the resulting savings were not being passed down to those who had to do business with the alliance. He also questioned why the proposed remedies merely capped charges, rather than reducing them.

"Why can't the charges come down at this difficult economic time?" he asked. "If the alliance manages to raise efficiency and savings, why is there no transparency in letting us know who benefited from the savings? We have not seen any port handling charges come down."

He added the council supported any efforts to make the terminal more competitive, but the alliance had yet to engage industry stakeholders for consultation over the proposed remedies.

The alliance yesterday said its members did "not believe that the Seaport Alliance raises competition law concerns but are pleased that their engagement with the Competition Commission has led to a solution".

The commission is gauging public views on the alliance's planned commitments until August 26 before finalising them.

The Transport and Housing Bureau said it would monitor the outcome of the consultation, in particular other industry stakeholders' feedback.

DP World had not responded to a request for comment. The alliance said last December that DP World was in talks to join them.

COMMERCE

Probe into controversial port alliance nears its end

Denise Tsang
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An investigation by the competition watchdog into a controversial super alliance of port operators in the city has reached its final stages, just as the only operator left out in the cold looks set to join.

Peter Levesque, the chief executive of Modern Terminals Ltd (MTL), revealed the Competition Commission had spent the past 19 months looking into whether the Hong Kong Seaport Alliance breached any anti-competition laws.

The alliance has been seen as a private sector strategy to raise the competitiveness of the struggling Hong Kong port against the backdrop of the continuing US-China trade war.

"It was a complex transaction," he said on Thursday in an interview before stepping down for a new job in the United States. "We're hoping that over the next few months, we will be able to work together with the commission, to address any outstanding issues and to know where this transaction stands."

Four out of five port operators at the Kwai Tsing Container Terminals proposed the unprecedented alliance, stoking fears they were creating a cartel at the container terminal, the lifeblood of the city's business.

The group, which controls 95 per cent of the market share at the port, caught the government and industry stakeholders off guard when it came to light in January,

A competition commission spokeswoman said the investigation was ongoing.

Apart from MTL, other members of the alliance include Hongkong International Terminals, COSCO-HIT Terminals and Asia Container Terminals. They collectively operate and manage 23 berths across eight terminals at the port in the New Territories.

Tycoon Li Ka-shing's Hutchison Port Holdings owns HIT, while COSCO-HIT and Asia Container Terminals are associates, and MTL is mostly owned by Wharf Holdings.

Levesque said the alliance was currently in talks to bring Australia-controlled Goodman

DP World on board. The remaining player at the port operates one berth.

"We wanted to keep the negotiations as simple as possible and so we kept the deal initially between the four major terminal operators," he said. "We are talking with DP World to understand how they might want to participate, and what role they might want to play. We should have something settled... over the next few months."

As spokeswoman for Goodman DP World declined to comment.

Although Washington and Beijing reached a deal to divert punitive tariffs on US\$160 billion worth of Chinese goods late on

Friday night, Hong Kong has still been negatively affected. The city's exports contracted 9.2 per cent in October, and 5.1 per cent in the first 10 months of this year from the same period last year.

Also, the mainland's recent rapid growth in sea trade with new and modern ports took up six of the world's 10 busiest ports last year, and fuelled punishing competition for Hong Kong.

Levesque said the alliance would raise Hong Kong's competitiveness. He said after it came into operation in April, the 23 berths were operating from a single control tower, which raised efficiency by reducing ships' waiting time, and also transport time

and the number of tractors. The alliance could help bring back 2 million 20ft equivalent units (TEUs) by 2021, he said. This represented almost 10 per cent of Hong Kong's throughput of 19.59 million TEUs last year.

"The Seaport Alliance can help mitigate the risks of the mainland liberalising its cabotage law in China," he said.

The threat of the city's loss of all transshipment rights emerged in 2013 when China launched a pilot free-trade zone in Shanghai and has since gradually relaxed cabotage restrictions within the zone. This means foreign-flagged but Chinese-owned ships can now engage in domestic shipping.

Previously, Hong Kong was the most convenient gateway for foreign ships to transit goods into Asia. But the new rules now allow more choices.

Hong Kong has dropped out of the rankings as one of the world's top five ports in terms of container throughput, falling to seventh from fifth in 2017, behind top-ranked Shanghai, Singapore and Ningbo-Zhoushan.

"Hong Kong's position as No 7 in the world is something we can still be proud of," Levesque said.

But Hong Kong Container Tractor Owner Association chairman Lam Hoi-tat said the logistics sector remained dubious about the alliance.

"The vision behind it is to cut costs, how it affects the industry is not certain yet," he said. "The business is really bad now, and I hope no lay-offs are resulted from improved efficiency."



Four of the five port operators at the Kwai Tsing Container Terminals have formed an alliance. Photo: Roy Issa

Source: SCMP

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Education and Advocacy



Publications

- Six guidelines providing guidance on Commission’s interpretation and enforcement of the Ordinance
- Enforcement Policy, Leniency Policies, Cooperation and Settlement Policy and Policy on Recommended Pecuniary Penalties
- Brochures introducing the Ordinance in an easy-to-understand approach

Educational videos

- Educational videos on “Fighting Bid-Rigging”, “Cartel” and “Combat Price Fixing Cartels”
- Short videos and micro movie explaining the Ordinance and cartels

Seminars

- Regular seminars to promote public understanding of the Ordinance



Complain and Report

- Completing an Online Complaint Form available on the Commission's website:
www.compcomm.hk
- Email: complaints@compcomm.hk
- Reporting number: (852) 3462 2118
- Leniency hotline: (852) 3996 8010
- Post: Competition Commission
19/F, South Island Place,
8 Wong Chuk Hang Road,
Wong Chuk Hang, Hong Kong
- In person at the Commission's office (by appointment only)



Q&A



Thank You!

