



競爭快訊

Competition Matters

第 5 期 Issue No.5 12/2017



競爭事務委員會
COMPETITION
COMMISSION

行政總裁的話 Message from CEO

這是我就任競爭事務委員會（競委會）行政總裁以來首次在《競爭快訊》致辭，我感到十分高興。自9月初上任以來，我一直與競委會內高度專業、盡忠職守的團隊共事，能有機會與他們一起協助香港這充滿活力的地方實施競爭法，我深感榮幸。

過去四個月，競委會各方面的工作都取得良好進展。特別是競委會於8月再度入稟競爭事務審裁處，指控十間建築工程公司從事瓜分市場及合謀定價行為；同月，競委會亦就某些定期班輪協議發出首個集體豁免命令。因應第二宗法庭案件，我們出色的公共事務團隊在11月底乘勢推出大型宣傳活動，加強社會對瓜分市場的認知，相信大家已經遇過我們的吉祥物——「合謀貓」，在新一輯電視宣傳短片及全城各處的海報中再次變身，劈開大西瓜（意喻廣東話的「瓜分」市場）；在未來數月，我們會就該主題陸續推出一系列宣傳活動。國際方面，競委會派代表出席了數個地區及國際反壟斷會議，亦拜訪了內地競爭法執法部門，這些交流讓我們不斷從其他司法管轄區汲取知識和經驗。

競委會與香港社會快將迎來《競爭條例》（《條例》）全面實施兩周年。

過去兩年裡，競委會推動了一連串工作，竭力履行職責，以確保本港市民得享競爭帶來的好處，我期望能繼往開來，繼續朝著這個目標邁進。

I am pleased to deliver the first message during my term as Chief Executive Officer of the Competition Commission (Commission). I took office in early September, and it has been wonderful working with a team of highly professional and dedicated staff at the Commission. I am truly excited and honoured to have the chance to help implement a competition regime in a vibrant place like Hong Kong.

The past four months have seen progress achieved by the Commission on various fronts. Notably, the Commission brought its second case before the Competition Tribunal in August, alleging that 10 construction and engineering companies engaged in market sharing and price fixing. The Commission also issued its first block exemption order for certain shipping liner agreements in the same month. Leveraging our second case, a major advocacy campaign was rolled out by our stellar Public Affairs staff in late November to raise community awareness of market sharing. You may have already been able to spot our mascot, the cartel cat, in a new costume breaking a giant watermelon (a pun for “splitting the market” in Cantonese) in our new TV announcement and posters across town. A series of publicity programmes will follow in the coming months. Internationally, representatives of the Commission have participated in several regional and international antitrust conferences as well as visits to our mainland counterparts where we continue to draw on the learning and experience of other jurisdictions.

The Hong Kong community and the Commission are soon welcoming the 2nd anniversary of the full commencement of the Competition Ordinance. Over the past two years, the Commission has been undertaking a range of initiatives to fulfill its mandate in ensuring that people of Hong Kong will be able to realise the benefits of competition. I look forward to continuing the great work that has been done towards that end.



冼博崙 Brent Snyder
行政總裁 Chief Executive Officer

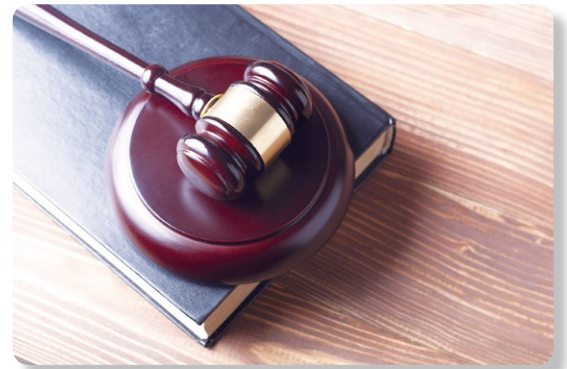
競委會全面運作 20 個月 第二宗案件入稟審裁處

Commission brings second case before Tribunal in 20 months of full operation

繼 2017 年 3 月就首宗圍標案件入稟之後，競委會再度於競爭事務審裁處（審裁處）展開法律程序，指控十間建築工程公司在位於九龍觀塘的公共屋邨安達邨第一期提供裝修服務時，涉嫌瓜分市場及合謀定價。競委會正尋求補救措施，包括罰款及宣布有關各方違反《條例》的「第一行為守則」。審裁處已排期於 2018 年 11 月就此案展開聆訊。

瓜分市場及合謀定價屬嚴重反競爭行為，該等行為會導致消費者的選擇減少、價格在沒有競爭的情況下飆升，令消費者和企業蒙受損失，破壞整體經濟，競委會將優先打擊這種破壞競爭的行為，因為當該等行為直接影響低收入家庭，如本案中的公屋居民時，後果尤其嚴重。公眾人士如遇上任何懷疑瓜分市場的行為，應向競委會舉報。

Following the first bid-rigging case filed in March 2017, the Commission commenced proceedings for the second time in the Competition Tribunal (Tribunal) against 10 construction and engineering companies for alleged market sharing and price fixing in relation to the provision of renovation services at Phase 1 of On Tat Estate, a public rental housing estate in Kwun Tong, Kowloon. The Commission is seeking remedies including pecuniary penalties and a declaration that each party has contravened the First Conduct Rule of the Ordinance. The case has been set down by the Tribunal for hearing in November 2018.



Market sharing and price fixing are serious anti-competitive practices which lead to reduced consumer choices and uncompetitively high prices, hurting consumers, businesses and the economy as a whole. The Commission prioritises combating these abuses of competition because they are particularly egregious when the people directly affected belong to low income groups such as the residents of the relevant public housing estate in this case. Members of the public are encouraged to report suspected market sharing to the Commission.

競委會展開宣傳活動 呼籲合力打擊瓜分市場

Commission launches advocacy campaign to call for joint efforts in combating market sharing



競委會因應第二宗入稟審裁處的案件，於 11 月下旬展開了「嚴打瓜分市場」宣傳活動，目的是透過一連串宣傳教育工作，提升社會對瓜分市場及其禍害的認知，並加強偵測該等行為。

瓜分市場是指競爭對手之間訂立協議將市場分割，同意不爭奪彼此的顧客、不進入或不將業務擴展至對手的市場或地域。《條例》於 2015 年 12 月全面生效以來，競委會收到逾 2,500 宗投訴及查詢，其中 60% 與「第一行為守則」有關，而包括瓜分市場在內的合謀行為，是當中的重點關注。在有關瓜分市場的投訴及查詢中，涉及最多宗數的三個行業分別為地產及物業管理、機器與設備，以及電訊

專題 Feature

業。瓜分市場行為在香港可能不及其他反競爭行為般廣為人知，但這種行為確實存在，並對消費者及企業造成損害。

宣傳活動包括推出新一輯電視宣傳短片及電台宣傳廣播，亦發布了一本小冊子，簡介如何偵測瓜分市場行為，並提醒公眾人士當懷疑有瓜分市場的情況發生時，應如何處理。另外，競委會還製作了兩套由鄭子誠主演、題為「舌尖上的陰謀」的教育短片，靈感來自「高登討論區」一篇廣傳的潮文，以輕鬆短劇的形式、簡單易明的手法解釋相關概念。為進一步接觸各界，競委會在未來數月將舉辦專題講座，並於各區舉辦巡迴展覽。歡迎瀏覽「[嚴打瓜分市場](#)」[資訊中心](#)了解詳情。

Riding on its second case before the Tribunal, the Commission launched a "Combat Market Sharing Cartels" Campaign (Campaign) in late November to raise public awareness of market sharing and its harm as well as to strengthen detection of such conduct through a series of advocacy and educational initiatives.

A market sharing cartel is an agreement between competitors to divide the market among themselves by agreeing not to compete for each other's customers, or not to enter or expand into a competitor's market or territory. Since the Ordinance came into full effect in December 2015, the Commission has received over 2,500 enquiries and complaints, of which 60% were on the First Conduct Rule with cartel conduct, including market sharing, being the major concern. Among the enquiries and complaints on market sharing, *Real Estate & Property Management*, *Machinery & Equipment* and *Telecommunications* are the top three sectors involved. Indeed, market sharing cartels can occur in any industry or sector. It may not be as commonly known in Hong Kong as other forms of anticompetitive conduct but it does exist, inflicting harm on consumers and businesses.

The Campaign features a new TV and radio announcement together with a brochure outlining practical information on how to identify market sharing and guidance on what to do should it be suspected. Two educational videos titled "A Bite of Conspiracy", inspired by a widely-shared article on Golden Discussion Forum and featuring actor Timothy Cheng Tse-sing, were produced to explain the concept in a light-hearted and easy to understand manner. To further educate and reach out to a wider audience, the Commission will organise targeted seminars and mini roving exhibitions across the territory in the coming months. Visit the "[Combat Market Sharing](#)" [Information Centre](#) for more details.



「舌尖上的陰謀」教育短片
"A Bite of Conspiracy"
educational videos

競委會就船舶共用協議發出集體豁免令

Commission grants block exemption to liner shipping vessel sharing agreements

2017年8月，競委會就定期班輪之間訂立的船舶共用協議，發出首個集體豁免命令（豁免令），其前提條件是：

- 船舶共用協議的訂約方合共擁有的市場佔有率不超過 40%；
- 船舶共用協議並無認可或要求船運公司從事合謀行為；及
- 船運公司有權在給予合理時間的通知後自由退出船舶共用協議，而無須承受處罰。

競委會發出豁免令之前，已評估船舶共用協議所帶來的經濟效率，亦考慮了多次諮詢期間所收到的意見。豁免令並不適用於自願討論協議，原因是有關活動未能獲證明符合經濟效率豁免的條件。然而，競委會在理由陳述書中提供了指引，說明哪些自願討論協議活動有可能引起競爭問題，及哪些不大可能違反《條例》。

這項為期五年的豁免令，是應香港定期班輪協會於 2015 年 12 月提交的申請而發出。另外，競委會亦為不獲豁免協議的訂約方提供為期六個月的寬限期，讓有關各方對其商業安排作出修正，寬限期至 2018 年 2 月 8 日結束。

[按此](#)瀏覽豁免令及理由陳述書，以及解釋豁免令條文的指南。

The Commission published its first Block Exemption Order (Order) in August 2017 for vessel sharing agreements (VSAs) between liner shipping companies, subject to the following conditions:

- The parties to the VSA do not collectively exceed a market share limit of 40%;
- The VSA does not authorise or require shipping lines to engage in cartel conduct; and
- Shipping lines are free to withdraw from the VSA without incurring a penalty on giving a reasonable period of notice.

The Order was issued in light of the Commission's assessment of the economic efficiencies generated by VSAs, and it has also taken account of the submissions received in various consultations. The Order does not cover voluntary discussion agreements (VDAs) as it was not demonstrated that the relevant VDA activities meet the terms of an efficiency exclusion. The Commission has, however, provided certain guidance in its Statement of Reasons as to which VDA activities may give rise to competition concerns, and which would be unlikely to contravene the Ordinance.

The Order, which will remain in effect for five years, was issued in response to an application from the Hong Kong Liner Shipping Association submitted in December 2015. The Commission is granting a 6-month grace period which will end on 8 February 2018 to allow the parties concerned to make changes to their commercial arrangements.

The Order and the Statement of Reasons, together with a Guidance Note which provides an explanation of the provisions of the Order, are available [HERE](#).

宣傳及倡導 Advocacy & Outreach

中學生赴新加坡遊學

Singapore study tour for secondary school students

在競委會舉辦的「競爭有道」宣傳創作比賽中脫穎而出的顯理中學、聖傑靈女子中學及順德聯誼會李兆基中學的參賽同學，於 2017 年 7 月底前往新加坡參加為期 3 日的遊學團。除了遊覽當地著名地標外，更到訪新加坡競爭委員局及新加坡國立大學，拜訪當地競爭法的幕後功臣，包括學者和專業人士。

勝出的隊伍亦向當地競爭法翹楚分享了他們的得獎作品，以及在比賽中的得着。順德聯誼會李兆基中學的得獎同學表示：「這個比賽讓我們獲得一個難得的機會，向新加坡競爭委員局的人員介紹我們的作品，大大提高了我們的自信心。」聖傑靈女子中學的同學指：「競爭法並不是我熟悉的議題，但這次比賽讓我認識到競爭政策如何令社會經濟受惠。」顯理中學的老師則說：「這個遊學團讓我可就不同的範疇，與其他學校的老師交流和互相學習，同時反思自己應如何作出改善。」

為繼續加強青少年對《競爭條例》的認識及了解，由 2017-2018 學年初至今，競委會已為不同的中學及大專院校舉辦了 10 多場工作坊。向年輕一代灌輸公平競爭的精神，這將會是競委會持續進行的工作之一。



三支勝出隊伍拜訪新加坡競爭委員局及新加坡國立大學

The 3 winning teams visited the Competition Commission of Singapore and the National University of Singapore

Winners of the Commission's "Competition Advocacy Contest" from Henrietta Secondary School, St. Catharine's School for Girls, and STFA Lee Shau Kee College went on a 3-day study tour to Singapore in late July 2017. Apart from visiting famous landmarks, highlights of the trip were visits to the Competition Commission of Singapore (CCS) and the National University of Singapore where they got a valuable chance to meet with experts and professionals who work behind the competition scene.

The winners also shared their winning works and the key take-away from the contest with the competition gurus. Winners from STFA Lee Shau Kee College said, "The contest offered us the rare opportunity to present our work to the CCS officials which greatly enhanced our confidence." A student from St. Catharine's School for Girls commented, "Competition law wasn't a topic that I was familiar with, but this contest really opened up a wealth of new knowledge about how competition policies benefit the economy." A teacher from Henrietta Secondary School noted, "This trip allowed me to exchange ideas and learn from teachers of other schools with a different perspective reflecting on how I could improve."

To continue its efforts to raise young people's awareness and understanding of the Competition Ordinance, the Commission has organised over 10 workshops for secondary schools, colleges and universities since the start of 2017-2018 academic year. It will be one of the Commission's ongoing initiatives to instill the spirit of fair competition into the minds of the younger generation.

宣傳及倡導 Advocacy & Outreach

在地區層面倡導打擊圍標

District outreach on fighting bid-rigging

競委會繼續推展各項宣傳，提高社會對圍標的認識，及提醒業主如何偵測及防止圍標。2017年8月至11月，競委會參加了三場樓宇管理簡介會，兩場分別由中西區區議會和東區區議會舉辦，其中一場則由房屋署為觀塘安泰邨舉辦。

持續與持分者接觸

8月24日，競委會為公眾及商界舉辦了一場研討會，參加者反應踴躍，提出的問題涉及多個競爭議題。過去4個月，競委會亦參與了8場會議及研討會，與不同行業協會及公共機構溝通。

The Commission continues its efforts in raising community awareness of bid-rigging and educating the public, especially property owners, on how to detect and prevent bid-rigging. Between August and November 2017, the Commission participated in three briefings on building management organised by the Central & Western District Council, Eastern District Council and Housing Department for On Tai Estate in Kwun Tong respectively.



Ongoing stakeholder engagement

A seminar targeting members of the public and businesses was held on 24 August where the audience showed great interest and raised questions on various competition issues. In the past four months, the Commission participated in eight engagement meetings and seminars with various stakeholders including different trade associations and public bodies.

最新動態 Upcoming Activity

亞洲競爭論壇

Asian Competition Forum

「第13屆亞洲競爭論壇」將於12月11日至12日在金鐘統一中心舉行。一眾來自本地及其他地區的競爭法專家及業內專業人士，屆時將聚首討論區內近期的競爭問題，涵蓋的議題包括貪污與圍標、全球化逆轉、電訊與多媒體以及國家主義。有關報名詳情，請[按此](#)。

The 13th Asian Competition Forum will be held on 11-12 December at the United Centre, Admiralty. Academics, competition law experts and industry professionals from Hong Kong and other jurisdictions will gather to discuss and share their perspectives on latest competition issues in the region including corruption and bid-rigging, globalisation in reverse, telecommunications and multimedia as well as nationalism. Click [HERE](#) for registration details.



國際交流活動 International Activities

「第六屆中國競爭政策論壇」於 2017 年 8 月底在上海舉行。論壇的主題為「經濟全球化背景下的競爭政策」。來自全球的競爭執法人員及專業人士雲集，分享各自對跨司法管轄區合作的觀點及經驗。競委會高級行政總監畢仲明先生在其中一個環節中，討論有效監管跨境反競爭行為對香港的重要性。

2017 年 9 月初，東亞地區各競爭事務局參加了在峇里舉行的「第 13 屆東亞競爭法首長級官員會議」，分享各司法管轄區的最新發展及趨勢，以及在跨境執法與合作方面所遇到的挑戰。畢仲明先生在會議上分享了香港執行競爭法的情況，及《條例》對社會所起的作用。

同月，競委會主席胡紅玉女士出席了紐約福坦莫競爭法研究所舉辦的「第 44 屆國際反壟斷法及競爭政策年會」。不少知名專家及多個司法管轄區的競爭機構首腦雲集，討論反壟斷法的最新議題。胡紅玉女士在論壇舉行前的「競爭機構首腦工作坊」中，與來自不同司法管轄區的出席者討論競爭執法機構應以原則還是務實為重。

2017 年 10 月中，主席胡紅玉女士率領競委會代表到北京，拜訪中國三大反壟斷機構，即國家發展和改革委員會、國家工商行政管理總局及商務部，雙方就競爭法事宜交流意見，並探討加強合作的可能性。是次拜訪提供了寶貴的機會，讓競委會向經驗較豐富的內地同儕學習。

The 6th China Competition Policy Forum was held in late August 2017 in Shanghai. With the theme of “Competition Policy in the Context of Economic Globalisation”, competition enforcement officials and professionals from around the world gathered to share their ideas and experience on cross-jurisdiction collaboration. Senior Executive Director of the Commission Mr. Rasul Butt discussed the importance of good governance of transnational anti-competitive conduct to Hong Kong in one of the sessions.

In early September 2017, competition agencies in the region participated in the 13th East Asia Top Level Officials’ (EATOP) Meeting on Competition Policy held in Bali to discuss the recent developments and trends in their jurisdictions and the challenges of cross-border enforcement and cooperation. Mr. Rasul Butt gave an update of the competition law enforcement in Hong Kong and its impact on the community so far.

In the same month, Chairperson of the Commission Ms. Anna Wu attended the 44th Annual Conference on International Antitrust Law and Policy organised by the Fordham Competition Law Institute in New York, where leading professionals and top international competition officials discussed the current issues in the antitrust arena. Speaking at the Heads of Authority Workshop, a pre-event to the Forum, Ms. Wu shared with participants from different jurisdictions on whether competition authorities should be principled or pragmatic in the Hong Kong context.

In mid-October 2017, representatives of the Commission led by Chairperson Ms. Anna Wu paid a courtesy visit to the three Chinese antimonopoly agencies in Beijing, namely *National Development and Reform Commission*, *State Administration for Industry and Commerce* and *Ministry of Commerce*, to exchange views on various competition issues and explore the possibility for strengthened collaboration. It was a valuable opportunity for the Commission to learn from its more experienced sister agencies on the mainland.



高級行政總監畢仲明先生參與
「第六屆中國競爭政策論壇」
Senior Executive Director Mr Rasul Butt
attended the China Competition Policy Forum






競委會代表與國家發展和改革委員會官員會面
Commission representatives met with officials from
the National Development and Reform Commission

競爭法學堂 *Competition Law Classroom*




破解瓜分市場迷思

瓜分市場在香港可能不及其他反競爭行為般廣為人知，而坊間亦對有關概念有一些誤解。以下是有關瓜分市場的一些迷思：

-  某地區只有一個服務供應商便是瓜分市場的證據。
這現象可能經已是競爭後所產生的結果，並不涉及瓜分市場。例如，目前只有一間公司掌握在該地區供應某貨品或服務的技術。
-  沒有市場權勢或規模較小的企業參與瓜分市場，並不會違反《條例》。
瓜分市場屬《條例》下其中一種嚴重反競爭行為，因此，規模較小的企業可獲豁免的條文並不適用。
-  公司與公司之間訂立瓜分市場協議並無不可，只要市場內還有其他沒有加入該協議的供應商便不成問題。
瓜分市場的協議被視為具有損害競爭之目的，因此，競委會確立有關行為屬違反《條例》時，無須證明它是否有損害市場競爭的效果。即使消費者在市場上仍有其他選擇，瓜分市場仍屬違法。

Debugging myths about market sharing

Market sharing may be a less commonly known form of anticompetitive conduct in Hong Kong and there have been some misconceptions about the concept. Here are some myths about market sharing that we may sometimes hear:

-  **Only one single service provider in an area is evidence of market sharing.**
Having only one supplier in a certain geographical area may be a competitive outcome which does not involve market sharing. For example, there is only one firm that currently has the technology to supply the product or service.
-  **Businesses with little market power will not contravene the Ordinance by sharing markets.**
Market sharing is as a form of serious anti-competitive conduct under the Ordinance to which the exemption for smaller businesses does not apply.
-  **It would be fine for a few companies to enter into market sharing agreements as long as there are some other suppliers in the market that are not part of the market sharing agreement.**
A market sharing agreement is considered to have the object of harming competition so it is not necessary for the Commission to demonstrate that it has harmful effects in the market in order to establish a contravention of the Ordinance. Even if consumers still have some choices in the market, it is still considered illegal.

