



行政總裁的話 Message from CEO

過去四個月，香港競爭法制度經歷了數個「第一次」。尤其值得注意的，是競爭事務審裁處（審裁處）作出了首宗罰款裁決，就如何釐定競爭法案件的罰款，提供了重要指引。此外，競委會於 3 月就一宗教科書銷售合謀案件入稟審裁處，除突顯了企業若繼續執行在《競爭條例》（《條例》）全面生效前所訂立的合謀協議所必須承擔的風險外，亦是競委會首次就附屬公司的行為，向對其有決定性影響的母公司追究法律責任。另外，競委會於 5 月首次根據《條例》第 60 條接納了承諾，反映我們在適當情況下會善用非訴訟方式處理競爭疑慮。而為了進一步提升執法能力，我們最近優化了合謀行為的寬待政策，並增設個人寬待；亦首次與金融監管機構簽訂諒解備忘錄。

因應新冠病毒疫情，競委會於本地及國際層面均迅速應對，除了向本港商界發出指引，以維護市場競爭及保障消費者權益外，我們亦舉辦了網上研討會，邀請來自世界各地的競爭法執法人員及學者，討論疫情所涉及的競爭議題。

在倡導工作方面，我們透過網上講座繼續接觸不同持份者，並推出了 Facebook 及 Instagram 專頁，透過社交媒體更廣泛地接觸各界。

隨著首任主席胡紅玉女士於 2020 年 4 月底卸任，標誌著競委會一個重要發展階段的完結。我們衷心感謝胡女士在建立及發展香港競爭法體系所作出的重大貢獻，並期待新任主席陳家殷先生帶領我們繼續向前，讓社會各界享受到市場競爭所帶來的好處。

The past four months has seen several “firsts” in Hong Kong’s competition law regime. Notably, the Competition Commission welcomed the first judgment on pecuniary penalties handed down by the Competition Tribunal (Tribunal). The ruling provides important guidance on the determination of fines in competition cases. In March, the Commission brought a textbook cartel case to the Tribunal which highlighted the risk of continuing cartel agreements that were reached before the Competition Ordinance (Ordinance) came into full effect and marked the first time the Commission seeks to hold a parent company liable for conduct by a subsidiary over which it exercises decisive influence. In May, the Commission accepted commitments under section 60 of the Ordinance for the first time, demonstrating its willingness to use non-litigation remedies where appropriate in addressing competition concerns. To strengthen our enforcement function, we recently enhanced our leniency programme for cartel conduct, introduced a leniency policy for individuals and signed our first Memorandum of Understanding with a financial regulator.



冼博崙 Brent Snyder
行政總裁 Chief Executive Officer

In response to the COVID-19 outbreak, the Commission has taken prompt actions both locally and internationally. Relevant guidance and advice were issued to the local business community with an aim to safeguard market competition and consumer welfare during this critical period. The Commission also hosted a webinar, bringing together competition enforcers and academics around the globe to discuss competition issues implicated by the epidemic.

On the advocacy front, we continued to engage various stakeholders through webinars and expanded our outreach on social media with the launch of a Facebook page and an Instagram account.

April 2020 marked the end of an era with the departure of our founding Chairperson Ms Anna Wu. The Commission is deeply grateful for her immense contributions to the establishment and development of a competition law regime in Hong Kong. We are excited and look forward to our new Chairman, Mr Samuel Chan, who will lead us forward in bringing the benefits of effective market competition to everyone in the city.

專題 Feature

裝修合謀案七間公司被判最高罰款

Seven companies ordered to pay maximum fines in renovation cartel case

2020年4月29日，審裁處就一宗涉及十間裝修工程公司的合謀案件，首次作出罰款裁決，當中七間公司須繳付《條例》下可判處的罰款上限¹，而所有公司均須支付競委會的訟費。競委會對於審裁處採納了其建議的計算方法以釐定罰款，感到十分高興，並相信判決有助發揮更強的阻嚇作用。

審裁處於去年5月裁定該十間公司在公共屋邨安達邨提供裝修服務時，從事瓜分市場及合謀定價行為。法庭的罰款裁決對企業發出了警號：但凡從事合謀行為，便須面對競委會的執法行動，後果可能相當嚴重。

On 29 April 2020, the Tribunal handed down its first judgment on pecuniary penalties against ten construction and engineering companies in a cartel case. Seven out of the ten companies were ordered to pay the maximum pecuniary penalty¹ allowable under the Ordinance and all of the companies were also ordered to pay the Commission's costs. The Commission is pleased that the Tribunal endorsed its recommended approach to the determination of pecuniary penalties, which should lead to stronger deterrence in future.

The decision follows the conviction of those ten companies for engaging in market sharing and price fixing when providing renovation services at public rental housing On Tat Estate last May. The penalties came as a warning to businesses that engaging in cartel conduct will be subject to the Commission's action and potentially result in serious consequences.



¹ 每項違反《條例》的行為的罰款金額最高可達該業務實體本地年度營業額的10%，最長可達3年。

The maximum pecuniary penalty of a contravention of the Ordinance is up to 10% of the undertaking's annual Hong Kong turnover per contravention for a maximum period of three years.

教科書銷售合謀案入稟審裁處

Textbook cartel case brought before Tribunal

2020年3月20日，競委會在審裁處向天利行書局有限公司、商務印書館（香港）有限公司、聯合出版（集團）有限公司及天利行書局有限公司總經理展開法律程序，指他們在向香港中小學學生銷售教科書期間，涉嫌合謀定價、瓜分市場及／或圍標。由於聯合出版對其附屬公司商務印書館具決定性的影響力，因此競委會同時就相關行為向聯合出版追究法律責任。競委會向審裁處作出的申請包括施加罰款、向上述人士發出取消董事資格令，以及宣布各方違反了《條例》下的「第一行為守則」。



雖然有關安排是在《條例》全面生效前所訂立，唯涉案的三間公司於《條例》全面生效後仍然繼續參與有關安排。此案帶出了一個重要訊息：競委會會調查任何於《條例》全面實施後開始或仍然繼續的合謀協議，並採取執法行動。

On 20 March 2020, the Commission commenced proceedings in the Tribunal against T.H. Lee Book Company Limited, Commercial Press (Hong Kong) Limited (Commercial Press), Sino United Publishing (Holdings) Limited (Sino United), and the General Manager of T.H. Lee Book Company Limited for alleged price fixing, market sharing, and/or bid rigging in relation to the sale of textbooks to primary and secondary school students in Hong Kong. The Commission also seeks to hold Sino United liable for the cartel on the basis of its exercise of decisive influence over Commercial Press, its subsidiary. Remedies sought by the Commission include pecuniary penalties, a director disqualification order against an individual and a declaration that each party has contravened the First Conduct Rule of the Competition Ordinance.

Although the alleged arrangements were arrived at prior to the full implementation of the Ordinance, the three companies had continued to engage in such arrangements after the Ordinance came into full effect. This case drives home the message that the Commission will investigate and take action against any cartel agreements that began or continued after the Ordinance was fully implemented.

與證監會簽署諒解備忘錄

Memorandum of Understanding with Securities and Futures Commission

競委會與證券及期貨事務監察委員會簽署了諒解備忘錄，加強雙方的合作及資料交流，尤其是與證券及期貨行業有關的競爭事宜。備忘錄同時為兩家機構建立了平台，讓雙方以不同形式進行技術性合作，包括人員培訓及借調。此備忘錄是競委會致力與本地監管機構建立雙邊合作，以促進競爭及打擊反競爭行為的其中一環。

The Commission has signed a Memorandum of Understanding (MoU) with the Securities and Futures Commission to enhance cooperation and the exchange of information between the two agencies, particularly on competition issues relating to the securities and futures industry. The MoU also establishes a platform for the two agencies to engage in other forms of technical cooperation, including staff training and secondment. This MoU is part of the Commission's endeavour to adopt a joined-up approach with relevant sector regulators in promoting competition and combating anti-competitive practices.

因應新冠病毒疫情提供意見

Commission issues advice in response to COVID-19



新型冠狀病毒疫情對香港企業的營運以及重要物資及服務的供應，均帶來嚴峻挑戰。就此，競委會於3月發布公告，以回應企業及消費者的疑問及關注。競委會在公告中表示，對於企業之間在這段期間的短暫合作安排，若是切實為應對疫情，並符合香港社會及消費者的利益，競委會在履行其執法及提供意見的職能時，將會以務實的手法處理。企業之間如有意進行該等安排，他們或其行業協會可主動聯絡競委會。

此外，競委會亦留意到香港特區政府最近推出了多項資助計劃，以協助受疫情影響的企業及個別人士。在部分計劃下，受資助企業會進行貨品或服務的採購。有見及此，競委會於5月發布新聞稿，提醒管理這些計劃的公營機構及參與計劃的供應商及受資助企業，必須遵守《條例》，並在採購過程中保持警覺，加強防範可能出現的反競爭行為。

[按此](#)瀏覽新冠病毒疫情期間施行《條例》的公告。

[按此](#)瀏覽就抗疫資助計劃發布的新聞稿。

The outbreak of COVID-19 has posed immense challenges to business operations and the supply of critical goods and services in Hong Kong. In this connection, the Commission issued a statement in March to address possible questions and concerns from businesses and consumers, stating that it will take a pragmatic approach in its enforcement and advisory functions for temporary measures among businesses which are genuinely necessitated by the outbreak and in the interests of Hong Kong consumers and society. Businesses proposing such measures, or their industry bodies, are welcome to contact the Commission.

The Commission is also aware that the Government has introduced various subsidy programmes to assist businesses and individuals affected by the outbreak, some of which entail the procurement of goods and services by the subsidy recipients. A press release was issued in May to remind and advise public bodies administering these programmes as well as businesses participating in the programmes, including suppliers and businesses receiving the subsidies, to adhere to the Ordinance, stay vigilant during the procurement process and strengthen defense against potential anti-competitive conduct.



Click [HERE](#) to view the statement on the application of the Ordinance during COVID-19.

Click [HERE](#) for the press release to businesses participating in anti-epidemic subsidy programmes.

競委會接納網上旅行社的承諾

Commission accepts commitments by online travel agents

2020年5月13日，競委會宣布接納三間主要網上旅行社 Booking.com、Expedia 及 Trip.com 作出的承諾。據競委會調查所得，上述網上旅行社與香港住宿提供者所訂立的合約中，若干條款或會損害競爭，有可能違反《條例》。三間旅行社承諾移除相關條款，以釋除競委會的疑慮。

有關條款訂明住宿提供者給予網上旅行社的房間價格、房間條件及／或房源，必需等同或優於住宿提供者在所有其他銷售渠道所提供的規格。這些條款或會削弱網上旅行社之間的競爭，亦可能妨礙新晉或規模較小的網上旅行社進入市場或擴展業務。相關條款被移除後，消費者、住宿提供者、潛在的新競爭者，以至香港整個旅遊業均可從中受惠。

競委會於3月就網上旅行社建議作出的承諾展開諮詢，在考慮了所收到的申述後，已要求上述網上旅行社修訂其建議的承諾。經修訂後的承諾已獲競委會接納。



[按此](#)瀏覽網上旅行社的承諾及競委會的接受通知書。



On 13 May 2020, the Commission announced the acceptance of commitments offered by three major online travel agents (OTAs), namely Booking.com, Expedia and Trip.com. The commitments address concerns raised by the Commission's investigation of the OTAs' contracts with accommodation providers in Hong Kong by removing clauses that may harm competition, potentially in contravention of the Ordinance.

The clauses of concern require accommodation providers to always give the OTA the same or better terms in regard to room prices, room conditions and / or room availability as those they offer in all other sales channels. These clauses can potentially soften competition among OTAs as well as hinder entry and expansion by new or smaller OTAs. It is expected that consumers, accommodation providers, potential new market entrants and the Hong Kong tourism industry as a whole will all benefit from the removal of these clauses.

The Commission commenced a consultation on the commitments proposed by the OTAs in March and thereafter requested the OTAs to modify their proposed commitments after considering the representations received. The modified commitments were accepted by the Commission.

Click [HERE](#) for the commitments and the Commission's notice of acceptance.



優化合謀行為寬待政策

Leniency programme for cartel conduct enhanced

競委會根據《條例》全面生效以來所累積的經驗，修訂了合謀行為寬待政策，同時擴大寬待範圍至個人層面。

在經修訂的《業務實體寬待政策》下，可獲得寬待的合謀成員包括：**首名**向競委會舉報其參與的合謀行為，而競委會在收到舉報時尚未就該行為展開初步評估或調查（第一類）；或**首名**就競委會已經展開評估或調查的合謀行為，向競委會的調查提供重大協助（第二類）。另外，新增設的《個人寬待政策》，亦容許牽涉入合謀行為的人士（例如公司僱員）申請寬待。

競委會同意**不會**在審裁處就寬待協議所涵蓋的行為，對成功獲寬待的申請人展開任何法律程序，包括**不會**尋求審裁處作出命令宣布其違反《條例》。如屬《業務實體寬待政策》下的第二類申請人，若有受害人展開後續訴訟索取損害賠償，競委會可向該類申請人發出違章通知書，要求其承認違反第一行為守則。

有關修訂令寬待政策更為清晰，並提供更強烈的誘因，以鼓勵更多公司及個別人士向競委會舉報。此舉將加強合謀行為的偵查及法例的執行，阻遏違法行為，亦有利受害人追討賠償。

[按此](#)瀏覽寬待政策的詳情。

Based on experience accumulated since the Ordinance came into full effect, the Commission has revised its leniency programme for cartel conduct, and at the same time expanded its coverage to individuals.

Under the revised Leniency Policy for Undertakings, leniency is available for the first cartel member that either discloses its participation in a cartel of which the Commission has not opened an initial assessment or investigation (Type 1); or provides substantial assistance to the Commission's investigation of a cartel which the Commission is already assessing or investigating (Type 2). The introduction of a new Leniency Policy for Individuals allows individuals involved in cartel conduct, such as employees of a company, to seek leniency as well.

The Commission will agree not to commence proceedings before the Tribunal against a successful leniency applicant as regards the conduct covered by the leniency agreement. This includes not bringing proceedings for an order declaring that the successful applicant has contravened the Ordinance. For Type 2 applicants under Leniency Policy for Undertakings, in the event of follow-on action for damages being initiated, the Commission may issue an infringement notice to them, requiring a commitment to admit to a contravention.

The revised framework will make it easier and more attractive for both companies and individuals to come forward and cooperate with the Commission. This will in turn improve detection of cartels, strengthen enforcement and enhance deterrence and victim recovery.

Click [HERE](#) for details of the leniency policies.



《個人寬待政策》
Leniency Policy for Individuals



《業務實體寬待政策》
Leniency Policy for Undertakings

宣傳及倡導 Advocacy & Outreach

持續與持份者接觸

Ongoing stakeholder engagement

期內，競委會的代表參加了 5 場由公營機構及法律界舉辦的活動，當中包括參加新公共屋邨入伙前的簡介會，向裝修承辦商講解《條例》內容，以及參與網上研討會，與法律界人士探討危機下的香港競爭法。此外，競委會亦於 6 月 8 日為企業及公眾人士舉辦了一場《競爭條例》網上講座。

競委會推出了全新「競爭『商』白線」[Facebook](#) 專頁及 [Instagram](#) 帳戶，期望透過社交媒體更廣泛地接觸各界，歡迎大家讚好、分享和追蹤，以緊貼競委會的最新資訊。

During the period, representatives of the Commission took part in five engagement events organised by public organisations and the legal community. These include speaking at a pre-intake briefing for decoration contractors at a new public housing estate and a webinar on Hong Kong competition law in times of crisis for legal practitioners. In addition, a webinar on the Competition Ordinance was held on 8 June, targeting businesses and the public in general.

To further its outreach on social media, the Commission has launched a [Facebook](#) Page and an [Instagram](#) account “Don’t Cheat. Compete.”. Like, share and follow us now to stay tuned.



最新動向

Upcoming activity

競委會將於 7 月 16 至 17 日參加香港貿易發展局在香港會議展覽中心舉辦的「創業日 2020」展覽，現場將設有展板及互動遊戲，亦會播放教育短片，以協助商界（特別是中小企）認識《條例》、各種反競爭行為，以及本地的競爭法案件。

歡迎大家前來參觀（5F-A12 攤位），請[按此](#)瀏覽詳情。



The Commission is participating in the Entrepreneur Day 2020 on 16 - 17 July at the Hong Kong Convention and Exhibition Centre, an event organised by the Hong Kong Trade Development Council. The booth will feature display panels, educational videos and interactive games to help businesses, especially SMEs, know more about the Ordinance, different anti-competitive conduct and competition cases in Hong Kong.

Come visit the Commission's booth (5F-A12) and click [HERE](#) for details of the event.

國際交流活動 International Activities

競委會於 4 月舉辦了一場網上研討會，探討競爭法執法機構在新冠病毒疫情下的應對方法。多位來自世界各地的競爭法執法人員、學者及專家均就疫情所引起的各種執法及政策事宜展開討論。是次活動獲得來自 50 多個司法管轄區及國際組織的參加者鼎力支持，歡迎[按此](#)重溫錄影。

競委會高級行政總監畢仲明先生於 2 月出席了於馬來西亞舉行的亞太經濟合作組織競爭政策及法律小組年會，並於會上分享了香港競爭法及有關政策的最新發展。



《競爭條例》網上講座
Webinar on Competition Ordinance



The Commission convened a webinar in April on competition authorities' responses to the COVID-19 epidemic, bringing together dozens of competition law enforcers, academics and experts around the world to discuss a wide range of enforcement and policy issues arising from the epidemic. The event received immense support with participants from over 50 jurisdictions and international organisations joining. Click [HERE](#) to watch the webinar.

In February, the Commission's Senior Executive Director Mr Rasul Butt spoke on the recent development of competition law and policy in Hong Kong at the annual meeting of the Competition Policy and Law Group of the Asia-Pacific Economic Cooperation (APEC) in Malaysia.

行政總裁冼博崙先生於有關競爭執法機構如何應對新冠病毒疫情的網上研討會中發言。
CEO Mr Brent Snyder spoke at the webinar on competition authorities' response to COVID-19.



高級行政總監畢仲明先生在亞太經合組織競爭政策及法律小組年會中發言。
Senior Executive Director Mr Rasul Butt spoke at the annual meeting of the Competition Policy and Law Group of APEC.

競爭法學堂 *Competition Law Classroom*

《競爭條例》下的「交換資料」(上)

業務實體於正常業務運作中，可就一眾事宜交換資料而無損競爭。不過，當互為競爭對手的企業交換影響競爭的敏感資料（不論是以口頭或書面通訊方式交換，包括電子通訊及聊天群組），便可能會引起競爭問題，因為這些行為會減低企業在決定其市場行為時的獨立性。在接下來兩期的《競爭快訊》中，我們將回應企業對於交換資料的一些常見疑問。

甚麼是影響競爭的敏感資料？

一般而言，有關價格、產量及個別顧客群組或地區的營業額等資料，最為敏感。如競爭對手私下交換未來價格意向，會被認為具有損害競爭的目的，有機會構成合謀定價。

對企業而言，交換哪些資料相對較為安全？

企業之間交換以下幾類資料，會引起競爭問題的可能性較低：

- 因已過去而不會損害競爭的舊有 / 歷史性資料
- 可防止競爭對手識別個別資料來源的概括性及綜合資料
- 不會披露資料來源的匿名資料
- 公開可得的資料

‘Exchange of information’ under the Competition Ordinance (I)

In the normal course of business, undertakings exchange information on a variety of matters with no risk to the competitive process. However, competition concerns may arise where competitors exchange competitively sensitive information, whether verbally or in writing including electronic group chats, as this may reduce independent decision-making by businesses with regard to their actions in the market. In the coming two issues, we are going to address some common questions that businesses may have on the topic.

What is competitively sensitive information?

Generally, information relating to prices, quantities and sales to particular customer groups or territories, is the most competitively sensitive. If competitors share information in private on future pricing intentions, the information exchange will likely be considered as having the object of harming competition and may amount to price fixing.

What kind of information is relatively safe for businesses to exchange?

The exchange of the following kinds of information is less likely to raise competition concerns:

- Historical data that is old enough not to pose any risk of harm to competition
- General and aggregated data that would prevent competitors from linking particular data to an individual source
- Anonymised data without disclosing the identity of the underlying sources
- Publicly available information

