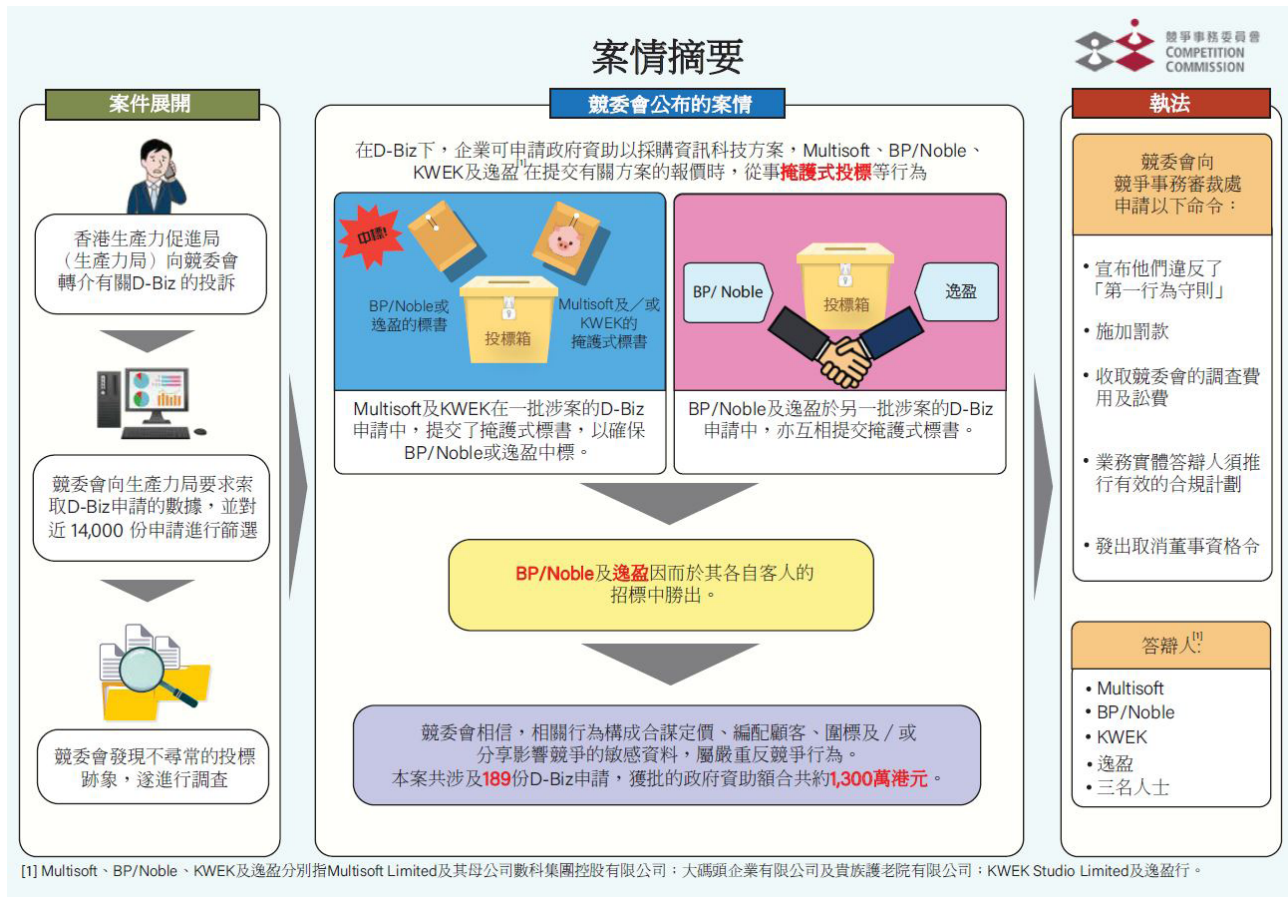


## 競委會就首宗有關政府資助計劃的合謀案件 入稟競爭事務審裁處 Filing of first cartel case relating to government subsidy scheme in Competition Tribunal



競委會於2023年3月22日入稟競爭事務審裁處（審裁處），向四間業務實體及三名人士展開法律程序。當中的業務實體包括：

1. Multisoft Limited 及其母公司數科集團控股有限公司；
2. 大碼頭企業有限公司及貴族護老院有限公司；
3. KWEK Studio Limited；及
4. 逸盈行。

競委會公布的案情指出，在遙距營商計劃（D-Biz）<sup>1</sup>下，企業可申請政府資助以採購資訊科技方案，而該四間業務實體在提交有關方案的報價時，從事掩護式投標<sup>2</sup>等行為。競委會相信，有關行為構成合謀定價、編配顧客、圍標及／或分享影響競爭的敏感資料，屬嚴重反競爭行為，違反《競爭條例》（《條例》）下的「第一行為守則」。本案共涉及189份D-Biz申請，獲批的政府資助額合共約1,300萬港元。

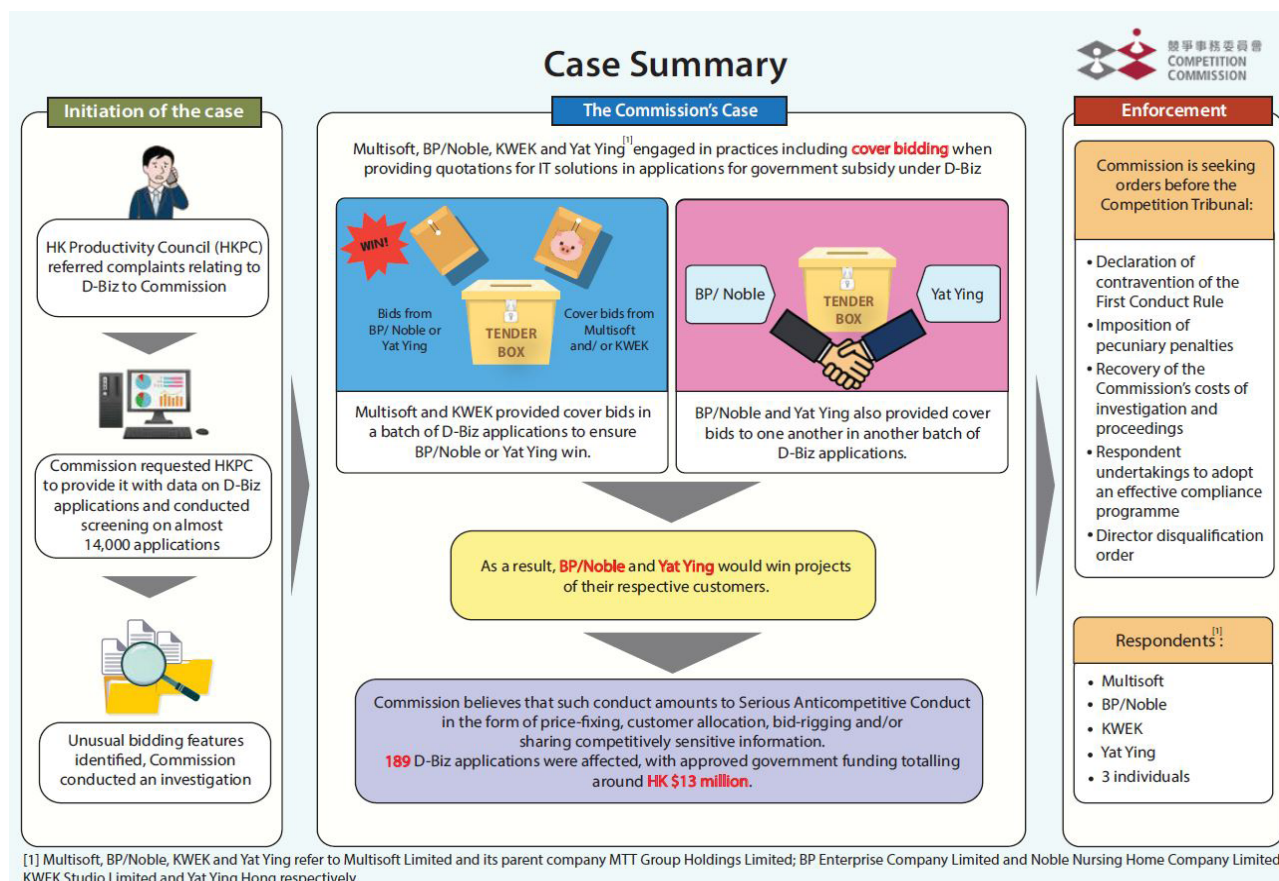
1 D-Biz 是創新科技署在政府防疫抗疫基金下推出的資助計劃，以支援企業在新冠疫情期間透過資訊科技方案繼續營運和提供服務。香港生產力促進局為該計劃的秘書處。

2 掩護式投標是指某些投標者同意出價高於預設中標者，或提出吸引力稍遜（或招標者不會接受）的條件。

2020年6月，香港生產力促進局（生產力局）向競委會轉介了數宗有關D-Biz的投訴。競委會在審視投訴後，向生產力局要求索取當時已收到的所有D-Biz申請的數據，並對近14,000份申請進行了篩選分析。競委會在當中發現不尋常的投標跡象，認為有必要正式立案調查。

調查期間，競委會亦發現某些人士可能干犯刑事罪行，包括偽造文書，以及提供虛假或具誤導性的資料等。競委會已將有關事宜轉交警方作刑事調查。

詳情見[新聞稿](#)、[背景資料](#)及[案情摘要](#)。



On 22 March 2023, the Commission commenced proceedings in the Competition Tribunal (Tribunal) against four undertakings and three individuals. The undertakings were:

1. Multisoft Limited and its parent company MTT Group Holdings Limited;
2. BP Enterprise Company Limited and Noble Nursing Home Company Limited;
3. KWEK Studio Limited; and
4. Yat Ying Hong.

It is the Commission's case that the four undertakings engaged in practices including cover bidding<sup>1</sup> when providing quotations for IT solutions in applications for government subsidy under the Distance Business Programme (D-Biz)<sup>2</sup>. The Commission believes that such

<sup>1</sup> Cover bidding occurs when certain bidders agree to submit bids with higher prices or less attractive (or unacceptable) terms than the bid of the designated winner.

<sup>2</sup> D-Biz was a funding scheme launched by the Innovation and Technology Commission under the Government's Anti-Epidemic Fund to support local enterprises to adopt IT solutions to continue their businesses and services during the COVID-19 epidemic. The Hong Kong Productivity Council was the Secretariat of the programme.

conduct amounts to serious anti-competitive conduct in the form of price fixing, market sharing, bid-rigging and/or sharing competitively sensitive information, in contravention of the First Conduct Rule of the Competition Ordinance (Ordinance). There were altogether 189 D-Biz applications affected in this case, with approved government funding totalling around HK\$13 million.



In June 2020, the Hong Kong Productivity Council (HKPC) referred various complaints relating to D-Biz to the Commission. Upon considering the complaints received, the Commission requested HKPC to provide it with data of all D-Biz applications received at that time and conducted screening on almost 14,000 applications, from which it identified unusual bidding features that warranted initiation of a formal investigation.

During the course of the investigation, the Commission has also found evidence suggesting that certain individual(s) may have committed criminal offence(s) including forgery and the provision of false or misleading information. These matters have been referred to the Police for criminal investigation.

View [Press Release](#), [Fact Sheet](#) and [Case Summary](#).

## 競委會跟進地產代理商發出有關物業交易佣金的內部通告 Commission looks into estate agencies' issuance of internal memos on commission for first-hand property transactions

2023年1月初，有傳媒報導指，四間地產代理商，即中原地產代理有限公司、香港置業（地產代理）有限公司、美聯物業代理有限公司及利嘉閣地產有限公司，各自於相若時間發出內部通告，指示其代理從2023年1月1日起，必須在一手物業交易收取最少百分之二的實收佣金。

競委會正了解事件，以評估有關行為會否引起《條例》下的競爭問題。根據《條例》「第一行為守則」，市場參與者之間不得訂立妨礙、限制或扭曲在香港的競爭的安排。

競委會一直關注任何旨在削弱競爭的企業行為，尤其是涉及如地產市場般影響眾多香港市民的行业。事實上，在過去兩年間，房地產及物業管理亦是競委會接獲投訴最多的三個行業之一。



詳情見[新聞稿](#)。

In January 2023, the media reported that four real estate agencies, namely Centaline Property Agency Limited, Hong Kong Property Services (Agency) Limited, Midland Realty International Limited and Ricacorp Properties Limited, had, in close timing from one another, each issued internal memos directing their respective agents to observe a minimum net commission of two percent in first-hand property transactions starting 1 January 2023.

The Commission is looking into the matter, with a view to assessing whether the conduct may give rise to competition concerns under the Ordinance. Under the First Conduct Rule of the Ordinance, arrangements between market participants which prevent, restrict or distort competition in Hong Kong are prohibited.

The Commission is concerned about any action from businesses that are aimed at reducing the level of competition, particularly in sectors such as the property market which affects many people in Hong Kong. As a matter of fact, real estate and property management has been one of the top three sectors where the Commission has received the most number of complaints over the past two years.

View [press statement](#).

## 強化「不合謀條款」範本 進一步保障採購程序

### Model “Non-collusion Clauses” enhanced to further protect procurement processes

競委會於2023年1月推出了「不合謀條款」範本的修訂版，供採購人員加入其招標文件及採購合約內。新增的條款要求競投者披露其實際權益擁有人，從而讓採購方更掌握採購過程的競爭狀況。

為減低採購方於採購過程中遇到反競爭行為的風險，競委會於2017年首度推出「不合謀條款」的範本，當中包括可納入招標文件內的不合謀字句範本，及讓競投者於入標時簽署、用以聲明其標書乃獨立擬備的確認書範本，以及有關文件的使用指南。該等條款旨在警告競投者不得作出反競爭的安排，以及一旦有違反條款的情況時，可為採購方提供直接的合約保障。

新增的條款，旨在處理實際權益擁有人相同的企業提交表面上是獨立、但實際上是經協調的標書的情況。有關行為雖然未必違法，但會令人對投標的競爭情況產生誤解。透過要求投標者披露其實際權益擁有人，採購人員將可取得關鍵資料，以評估投標過程的競爭狀況，並可按照本身的採購政策，決定如何應對。

[按此](#)瀏覽「不合謀條款」範本。



The Commission has published a revised set of model “Non-collusion Clauses” in January 2023 for procurers to incorporate in their invitation to bid documents and contracts. The newly added clauses require bidders to identify their beneficial owners which, in turn, will provide procurers with greater clarity as to the competitiveness of the procurement process.

To reduce procurers’ exposure to anti-competitive conduct during procurement exercises, the Commission published the first set of model “Non-collusion Clauses” in 2017 which comprised model non-collusion wordings that may be included in an invitation to bid, a model certificate for bidders to sign as part of their submission to declare that the bid was developed independently, and a user’s guide on such documents. The clauses serve to warn bidders against making anti-competitive arrangements, as well as to provide a straightforward contractual remedy for procurers in case these clauses have been breached.

The newly-added clauses address situations where businesses submit what appear to be independent bids but which in fact have been coordinated due to the existence of a common beneficial owner. Although not necessarily unlawful, such behaviour gives a misleading impression on the level of competition in a bidding process. By requiring bidders to disclose beneficial ownership, procurers will be provided with a crucial piece of information when assessing the potential competitiveness of a procurement process, and may decide on how to respond based on their procurement policy.

Browse the model “Non-collusion Clauses” [HERE](#).

## 競委會出席多個會議 加強與內地及海外機構交流 Commission strengthens connection with Mainland and international counterparts through in-person exchanges

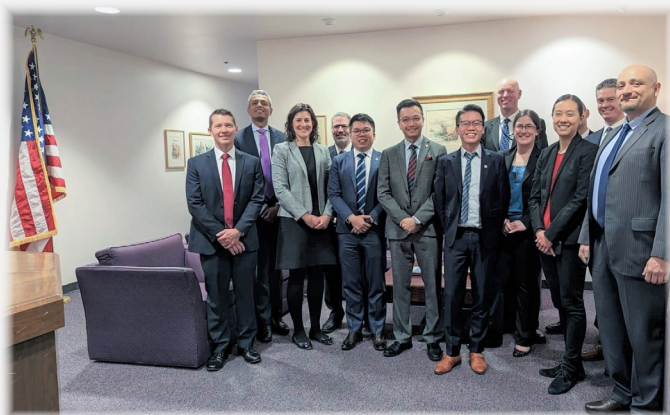
2023年2月，競委會參與了在美國加州舉行的亞太經濟合作組織（亞太經合組織）競爭政策及法律小組年會。會上，競委會行政總裁畢仲明先生向亞太經合組織成員分享了香港競爭法及政策的最新發展，以及競委會的執法重點。畢先生及競委會訴訟事務主管李曉亮先生亦於工作坊上發言，分享競委會在專責審裁處的訴訟經驗，以及如何在有限資源下應付龐大的工作量。

會議期間，競委會與美國司法部反壟斷部門的高級行政人員就法律及調查程序進行了雙邊討論。亞太經合組織會議後，競委會到訪美國司法部反壟斷部門及聯邦貿易委員會的三藩市地區總部，深入探討多項議題，當中涉及數碼經濟、僱傭及公共採購等領域的潛在反競爭行為。



2023年3月，競委會主席陳家殷先生及行政總裁畢先生接待來自廣東省市場監督管理局

的張文獻先生及王詩翔先生所率領的代表團，包括廣東省及若干市、區級市場監督管理局官員。競委會與代表團在執法和倡導工作上互相交流，並探討未來在粵港澳大灣區框架下開展更深入及更廣泛的協作，包括企業合規培訓、經驗知識交流及更多元化的競爭倡導活動等。



In February 2023, the Commission participated in the Asia-Pacific Economic Cooperation (APEC) Competition Policy and Law Group annual meeting in California, United States, where its Chief Executive Officer Mr. Rasul Butt shared with APEC Member Economies the latest development of Hong Kong's competition law and policy and the Commission's work priorities. Mr. Butt and the Commission's Head of Litigation Mr. Lester Lee also

spoke at a workshop, sharing the Commission's experience in litigating competition law cases before a specialist tribunal and in coping with an enormous workload with its limited resources.

On the sidelines of the meeting, the Commission had a bilateral discussion with top executives from the U.S. Department of Justice (USDOJ) Antitrust Division on legal and investigative procedures. Following the APEC events, the Commission paid visits to the USDOJ Antitrust Division and the Federal Trade Commission at their regional headquarters in San Francisco, where the three parties had deep dive discussions into issues relating to potential anti-competitive conduct in the fields of digital economy, labour, and public procurement.

In March 2023, the Commission's Chairman Mr. Samuel Chan and CEO Mr. Butt welcomed a delegation led by the Guangdong Administration for Market Regulation executives Mr. Zhang Wenxian and Mr. Wang Shixiang, and joined by officials from several market regulators at the city and district levels. The Commission had fruitful exchanges with the delegation regarding competition enforcement and advocacy work. Possible areas of collaboration within the Greater Bay Area framework were also explored, which could include compliance training for corporations, exchange of experience and knowledge, as well as creative approaches to advocacy.



## 中學生睇劇認識《競爭條例》

### Docudrama fun for secondary students to learn about Competition Ordinance

競委會於2023年2月推出了「合謀有罪！睇劇認識《競爭條例》」教育活動，邀請全港中學報名參加，並鼓勵學校將活動納入其高年級學生的生涯規劃教育系列。

該教育活動旨在促進年輕一代加深認識《條例》的主要內容，以及競爭的價值。活動時間長約50分鐘，參與的學校將獲發教材套，內容包括兩集改編自一宗香港競爭法真實個案的電視實況劇，並附有PowerPoint簡報及工作紙，協助老師講解《條例》，及測試學生對課題的認識。



活動截止報名日期為**2023年4月28日**，歡迎學校報名參加。

[按此](#)報名。

#### 其他宣傳活動

競委會於2023年第一季度繼續積極接觸各界，包括舉辦大型網上講座，向商界及公眾人士介紹《競爭條例》。是次講座共830人參加，創下新高。競委會在這期間亦參與了另外10項網上及實體宣傳活動，接觸不同持份者。

下一場《競爭條例》網上講座（以廣東話進行）將於2023年7月19日舉行，請[按此](#)登記。

The Commission has launched the “Cartel Hunters – Learn more about the Competition Ordinance” educational programme in February 2023, inviting all secondary schools in Hong Kong to sign up and include the programme as part of the life planning education series for their upper form students.

The educational programme aims to promote understanding of the key elements of the Ordinance and the values of competition among the younger generation. Participating schools will receive a teaching kit for the 50-minute programme which comprises a two-episode TV docudrama adapted from a real-life competition law case handled by the Commission, a PowerPoint presentation, and a worksheet to test students’ understanding of the topic.

Schools are welcome to sign up for the programme by **28 April 2023**.

Click [HERE](#) to register.

## Other engagements

The Commission continued its engagement efforts in the first quarter of 2023, which included a webinar to introduce the Ordinance to businesses in general and members of the public. The event has attracted a record high of 830 participants. The Commission also participated in 10 other engagement events, both online and in-person, targeting different stakeholders.

The next webinar on the Ordinance (in Cantonese) will be held on 19 July 2023. Click [HERE](#) to register.

## 競委會年報贏得 Vision Awards Commission's Annual Report wins Vision Awards

競委會於美國通訊專業聯盟舉辦的 Vision Awards 2021/22 年報大賽中奪得「政府組別」金獎。

Vision Awards 今年吸引了全球各地近 1,000 份作品參加。除金獎之外，競委會的年報亦被列為「全球100份最佳年報」之一，並憑藉美觀的設計及卓越的資訊表達方式，獲頒「技術成就獎」。

The Commission has won the Gold Award in the Government category of the Vision Awards 2021/22 Annual Report Competition organised by the League of American Communications Professionals.

This year's Vision Awards has drawn nearly 1,000 entries from a broad range of organisations around the world. Apart from the Gold Award, the Commission's 2021/22 Annual Report was named one of the "Top 100 Reports Worldwide", and also garnered a Technical Achievement Award for its overall excellence in the art and method of annual report communications.

