

PART 1

INTERPRETATION

2. Interpretation

(1) In this Ordinance –

“agreement” (協議) includes any agreement, arrangement, understanding, promise or undertaking, whether express or implied, written or oral, and whether or not enforceable or intended to be enforceable by legal proceedings;

“Broadcasting Authority” (廣管局) means the Broadcasting Authority established by section 3 of the Broadcasting Authority Ordinance (Cap. 391);

“Commission” (競委會) means the Competition Commission established by section 128;

“company” (公司), in addition to the meaning given by section 2(1) of the Companies Ordinance (Cap. 32), includes a “non-Hong Kong company” within the meaning of that Ordinance and a company registered under Part IX of that Ordinance;

“competition matter” (競爭事宜) means any matter involving or having a connection with –

- (a) a contravention or alleged contravention of a competition rule; or
- (b) any decision relating to a competition rule, that has been made or is to be made under this Ordinance;

“competition regulator” (競爭規管者) means any one of the following –

- (a) the Commission;
- (b) the Telecommunications Authority; or
- (c) the Broadcasting Authority;

“competition rule” (競爭守則) means –

- (a) the first conduct rule;
- (b) the second conduct rule; or
- (c) the merger rule;

“conduct” (行為) means any conduct, whether by act or omission;

“conduct rule” (行為守則) means –

- (a) the first conduct rule; or
- (b) the second conduct rule;

“confidential information” (機密資料) has the meaning given by section 122;

“contract of employment” (僱傭合約) means any agreement, whether in writing or oral, express or implied, under which one person (an “employer”) agrees to employ another and that other agrees to serve the employer as an employee, and also includes a contract of apprenticeship;

“director” (董事) includes any person occupying the position of director or involved in the management of a company, by whatever name called, and includes a shadow director;

“document” (文件) includes information recorded in any form;

“first conduct rule” (第一行為守則) has the meaning given by section 6;

“functions” (職能), except in section 129, includes powers and duties;

“funds of the Commission” (競委會資金) means the funds of the Commission, as specified in section 21 of Schedule 5;

“Government” (特區政府) does not include a company that is wholly or partly owned by the Government;

“information” (資料) includes information contained in a document;

“infringement notice” (違章通知書) means an infringement notice issued under section 66(2);

“investigation” (調查) means an investigation conducted under Part 3;

“leniency agreement” (寬待協議) means a leniency agreement made under section 79;

“member” (委員), in relation to the Commission, means a member of the Commission appointed under section 2 of Schedule 5;

“merger” (合併) has the meaning given by section 3 of Schedule 7 read together with section 5 of that Schedule;

“merger rule” (合併守則) has the meaning given by section 3 of Schedule 7;

“person” (人), in addition to the meaning given by section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), includes an undertaking;

“President” (主任法官) means the President of the Tribunal appointed under section 135;

“reviewable determination” (可覆核裁定) has the meaning given by section 81;

“serious anti-competitive conduct” (嚴重反競爭行為) means any conduct that consists of any of the following or any combination of the following –

(a) fixing, maintaining, increasing or controlling the price for the supply of goods or services;

(b) allocating sales, territories, customers or markets for the production or supply of goods or services;

(c) fixing, maintaining, controlling, preventing, limiting or eliminating the production or supply of goods or services;

(d) bid-rigging;

Note –

See also subsection (2).

“second conduct rule” (第二行為守則) has the meaning given by section 21;

“shadow director” (幕後董事), in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act, but a person is not to be regarded as a shadow director by reason only that the directors act on advice given by that person in a professional capacity;

“statutory body” (法定團體) means a body of persons, corporate or unincorporate, established or constituted by or under an Ordinance or appointed under an Ordinance, but does not include –

- (a) a company;
- (b) a corporation of trustees incorporated under the Registered Trustees Incorporation Ordinance (Cap. 306);
- (c) a society registered under the Societies Ordinance (Cap. 151);
- (d) a co-operative society registered under the Co-operative Societies Ordinance (Cap. 33); or
- (e) a trade union registered under the Trade Unions Ordinance (Cap. 332);

“Telecommunications Authority” (電管局局長) means the Telecommunications Authority appointed under section 5 of the Telecommunications Ordinance (Cap. 106);

“Tribunal” (審裁處) means the Competition Tribunal established by section 133;

“undertaking” (業務實體) means any entity, regardless of its legal status or the way in which it is financed, engaged in economic activity, and includes a natural person engaged in economic activity.

(2) For the purposes of the definition of “serious anti-competitive conduct” –

“bid-rigging” (圍標) means –

- (a) an agreement –
 - (i) that is made between or among 2 or more undertakings whereby one or more of those undertakings agrees or undertakes not to submit a bid or tender in response to a call or request for bids or tenders, or agrees or undertakes to

withdraw a bid or tender submitted in response to such a call or request; and

- (ii) that is not made known to the person calling for or requesting bids or tenders at or before the time when a bid or tender is submitted or withdrawn by a party to the agreement or by an entity controlled by any one or more of the parties to the agreement; or

(b) a submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by an agreement –

- (i) that is made between or among 2 or more undertakings; and
- (ii) that is not made known to the person calling for or requesting bids or tenders at or before the time when a bid or tender is submitted or withdrawn by a party to the agreement or by an entity controlled by any one or more of the parties to the agreement;

“goods” (貨品) includes real property;

“price” (價格) includes any discount, rebate, allowance, price concession or other advantage in relation to the supply of goods or services;

“supply” (供應) –

- (a) in relation to goods, means sell, rent, lease or otherwise dispose of the goods, an interest in the goods or a right to the goods, or offer so to dispose of the goods or of such an interest or right; and
- (b) in relation to services, means sell, rent or otherwise provide the services or offer so to provide the services.

SCHEDULE 1

GENERAL EXCLUSIONS FROM CONDUCT RULES

1. **Agreements enhancing overall economic efficiency**

The first conduct rule does not apply to any agreement that –

- (a) contributes to –
 - (i) improving production or distribution; or
 - (ii) promoting technical or economic progress; and
- (b) does not impose on the undertakings concerned restrictions that are not indispensable to the attainment of the objectives stated in paragraph (a); and
- (c) does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

2. **Compliance with legal requirements**

(1) The first conduct rule does not apply to an agreement to the extent that it is made for the purpose of complying with a legal requirement.

(2) The second conduct rule does not apply to conduct to the extent that it is engaged in for the purpose of complying with a legal requirement.

(3) In this section –

“legal requirement” (法律規定) means a requirement –

- (a) imposed by or under any enactment in force in Hong Kong; or
- (b) imposed by any national law applying in Hong Kong.

3. **Services of general economic interest etc.**

Neither the first conduct rule nor the second conduct rule applies to an undertaking entrusted by the Government with the operation of services of

general economic interest in so far as the conduct rule would obstruct the performance, in law or in fact, of the particular tasks assigned to it.

4. Mergers

(1) To the extent to which an agreement (either on its own or when taken together with another agreement) results in, or if carried out would result in, a merger, the first conduct rule does not apply to the agreement.

(2) To the extent to which conduct (either on its own or when taken together with other conduct) results in, or if engaged in would result in, a merger, the second conduct rule does not apply to the conduct.

5. Agreements of lesser significance

(1) The first conduct rule does not apply to –

(a) an agreement between undertakings in any calendar year if the combined turnover of the undertakings for the year preceding that calendar year does not exceed \$100,000,000;

(b) a concerted practice engaged in by undertakings in any calendar year if the combined turnover of the undertakings for the year preceding that calendar year does not exceed \$100,000,000; or

(c) a decision of an association of undertakings in any calendar year if the turnover of the association for the year preceding that calendar year does not exceed \$100,000,000.

(2) Subsection (1) does not apply to an agreement, a concerted practice, or a decision of an association of undertakings, that involves serious anti-competitive conduct.

(3) In this section –

“turnover” (營業額) –

(a) in relation to an undertaking that is not an association of undertakings, means the total gross revenues of the undertaking whether obtained in Hong Kong or outside Hong Kong; and

(b) in relation to an association of undertakings, means the total gross revenues of all the members of the association whether obtained in Hong Kong or outside Hong Kong;

“year” (年) means the financial year of an undertaking or, if the undertaking does not have a financial year, a calendar year.

6. Conduct of lesser significance

(1) The second conduct rule does not apply to conduct engaged in by an undertaking the turnover of which does not exceed \$11,000,000 for the year preceding the year in which the conduct is engaged in.

(2) In this section –

“turnover” (營業額) means the total gross revenues of an undertaking whether obtained in Hong Kong or outside Hong Kong;

“year” (年) means the financial year of an undertaking or, if the undertaking does not have a financial year, a calendar year.