

立法會
Legislative Council

LC Paper No. LS77/14-15

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 17 July 2015**

Tabling in LegCo : Council meeting of 14 October 2015

Amendment to be made by : Council meeting of 11 November 2015 (or
2 December 2015 if extended by resolution)

**PART I SUBSIDIARY LEGISLATION UNDER THE COMPETITION
ORDINANCE (CAP. 619)**

Competition Ordinance (Commencement) (No. 2) Notice 2015	(L.N. 156)
Competition Tribunal Rules (Commencement) Notice	(L.N. 157)
Competition Tribunal Fees Rules (Commencement) Notice	(L.N. 158)
Competition Tribunal Suitors' Funds Rules (Commencement) Notice	(L.N. 159)
Rules of the High Court (Amendment) Rules 2015 (Commencement) Notice	(L.N. 160)
Competition (Fees) Regulation	(L.N. 155)

Background

The Competition Ordinance (Cap. 619), which was enacted in June 2012 and amended in 2014, provides for, among others, prohibitions against conduct that prevents, restricts or distorts competition in Hong Kong; prohibitions against mergers that substantially lessen competition in Hong Kong; and establishment of the Competition Commission (the Commission) and the Competition Tribunal (the Tribunal).

2. By virtue of L.N. 177 of 2012, the provisions of Cap. 619 relating to (a) the establishment, functions and powers of the Commission; (b) merger; (c) determination of turnover of undertaking; (d) fees; (e) personal immunity of public officers; and (f) disclosure of information came into operation on 18 January 2013; while those relating to the establishment and constitution, jurisdiction and powers, and practice and procedure, of the Tribunal came into operation on 1 August 2013.

3. The uncommenced provisions of Cap. 619 include provisions on (a) the first and second conduct rules; (b) complaints and investigations; (c) enforcement powers of Commission; (d) review by the Tribunal; (e) enforcement before the Tribunal; (f) private actions; (g) concurrent jurisdiction relating to telecommunications and broadcasting; (h) indemnities and offences; (i) the Schedules to Cap. 619 relating to various matters including general exclusions from the conduct rules, mergers, orders that may be made by the Tribunal in relation to mergers and contraventions of competition rules, and matters that must be provided for in the Memorandum of Understanding. According to the Administration, these provisions have not been brought into operation pending the completion of the Commission's guidelines and the Tribunal rules and procedures.

4. As part of the Administration's plan to bring Cap. 619 into full operation, three batches of subsidiary legislation (consisting of 9 items) were gazetted on 23 November 2012 (L.N. 177 of 2012), 18 February 2015 (L.N. 36 of 2015 to L.N. 39 of 2015) and 5 June 2015 (L.N. 109 of 2015 to L.N. 112 of 2015) respectively on various legal, administrative and procedural matters. Except for the Competition Tribunal Rules (L.N. 109 of 2015), the Competition Tribunal Fees Rules (L.N. 110 of 2015), the Competition Tribunal Suitors' Funds Rules (L.N. 111 of 2015) and the Rules of the High Court (Amendment) Rules 2015 (L.N. 112 of 2015), the other items of subsidiary legislation have been brought into operation.

L.N. 156

5. By L.N. 156 made under section 1(2) of Cap. 619, the Secretary for Commerce and Economic Development has appointed 14 December 2015 as the day on which the uncommenced provisions of Cap. 619 come into operation. The legal effect of L.N. 156, when read together with L.N. 155 and L.N. 157 to L.N. 160, is that Cap. 619 will be brought into full operation as from 14 December 2015.

6. Members may refer to the Legislative Council (LegCo) Brief (File Ref: CITB CR 05/62/25/14) issued by the Commerce and Economic Development Bureau on 15 July 2015 for further information.

L.N. 157 to L.N. 160

7. L.N. 157 to L.N. 160 respectively appoint 14 December 2015 as the day on which L.N. 109 of 2015 to L.N. 112 of 2015 come into operation.

8. L.N. 109 prescribes the practice and procedure to be followed in the Tribunal in all matters with respect to which the Tribunal has jurisdiction and any matters incidental or relating to that practice or procedure. L.N. 110 prescribes the fees payable in connection with the applications to the Tribunal and proceedings in the Tribunal so that the fees for similar matters or items in the High Court and the Tribunal are standardized at the same levels. L.N. 111 provides for the administration of the suitors' funds kept by the Tribunal established under Cap. 619. L.N. 112 amends the Rules of the High Court (Cap. 4A) to provide for the practice and procedure in the Court of First Instance of the High Court for the transfer of proceedings under Cap. 619.

9. Before the tabling of L.N. 109 to L.N. 112 in LegCo, a subcommittee was formed to study them in their draft form (the draft Rules). All the amendments suggested by the subcommittee on the draft Rules have been incorporated in L.N. 109 to L.N. 112 when they were gazetted. Members may refer to the subcommittee's report dated 20 May 2015 (LC Paper No. CB(4)1016/14-15) for further information.

L.N. 155

10. Under section 164 of Cap. 619, the Chief Executive (CE) may make regulations prescribing the amount of fees for the making of an application to the Commission under Cap. 619 and the provision of any service. Under section 159 in Part 11 of Cap. 619, the Communications Authority (CA) may perform the functions of the Commission under Cap. 619 in so far as they relate to the conduct of undertakings that are licensees under the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562). Section 164(4)(d) of Cap. 619 provides that regulations for fees may provide for the reduction, waiver or refund, in whole or in part, of any fee, either upon the happening of certain event or in the discretion of the Commission.

11. L.N. 155 is made by CE under section 164 of Cap. 619 after consultation with the Executive Council to prescribe the amount of fees payable for making certain applications to the Commission or CA under Cap. 619. The prescribed fees which are set out in the Schedule to L.N. 155 are summarized below:-

Types of application	Specified amount per application (HK\$)
Application under section 9(1) or 24 for a decision as to whether an agreement or conduct is excluded or exempt from the application of the first or second conduct rule ¹ (except an application for exclusion from the application of the first conduct rule on the ground of an agreement enhancing overall economic efficiency) ²	50,000
Application under section 9(1)(a) for a decision as to whether an agreement is excluded from the application of the first conduct rule on the ground of an agreement enhancing overall economic efficiency	100,000
Application under section 15 for the issue of a block exemption order in respect of a particular category of agreement	500,000
Application for a decision as to whether a merger is, or a proposed merger would (if completed) be, excluded from the application of the merger rule ³ or Schedule 7 to Cap. 619	500,000

12. L.N. 155 provides for different charging mechanisms in relation to the applications made to the Commission and CA. For an application made to the Commission, a fee of the specified amount is payable on the making of the application subject to the discretion of the Commission to reduce, waive or

¹ Under section 6 of Cap. 619, the first conduct rule prohibits agreements, concerted practices as well as decisions of an association of undertakings that have the object or effect to prevent, restrict or distort competition in Hong Kong. Under section 21 of Cap. 619, the second conduct rule prohibits an undertaking with a substantial degree of market power from abusing that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong.

² Under sections 9(1), 24(1) and Schedule 1 to Cap. 619, exclusions or exemptions from the application of the first and second conduct rules which are not provided on the ground of agreements enhancing overall economic efficiency include agreements or conducts which (a) are for compliance with legal requirements; (b) are for services of general economic interest; (c) result in a merger; (d) are of lesser significance; (e) fall under the exemption provided by a block exemption order; (f) fall under exemption provided by an order made by the CE in Council on the ground of public policy or avoidance of conflict with international obligations; or (g) fall under the disapplication provided for statutory bodies or specified persons or specified persons engaged in specified activities.

³ Under section 3(1) of Schedule 7 to Cap. 619, an undertaking must not, directly or indirectly, carry out a merger that has, or is likely to have, the effect of substantially lessening competition in Hong Kong.

refund the fee in whole or in part (section 3 of L.N. 155). According to paragraph 6 of the LegCo Brief (File Ref: CITB CR 05/62/43/9) issued by the Commerce and Economic Development Bureau on 15 July 2015, the charging of fees up front by the Commission would deter frivolous applications and reduce the risk of difficulty in recovering fees after the applications have been processed. If the cost involved in processing an application is lower than the specified amount, the Commission is prepared to exercise its discretion to refund part of the collected fee to reflect the cost.

13. For an application made to CA, CA will charge a fee which is equal to the costs and expenses incurred by CA in making a decision on the application or in relation to the processing of the application but shall not exceed the specified amount in the Schedule to L.N. 155. L.N. 155 does not provide for a discretion for CA to reduce, waive or refund any fees (section 5 of L.N. 155). According to paragraphs 5 and 8 of the LegCo Brief, the Administration considers that such discretion is not to be given to CA due to the cost recovery principle adopted by the Office of the Communications Authority.

14. Further, L.N. 155 provides that if the Commission or CA declines to consider the application, the fee paid will be refunded or no fee will be charged (sections 3(2) and 5(4) of L.N. 155). In the case of transfer of application between the Commission and CA, the authority to which the application has been transferred would charge the fee for the application and the authority which initially received the application would not charge any fees and any fees paid will be refunded (sections 4 and 6 of L.N. 155).

15. According to paragraph 4 of the LegCo Brief, the Commission has taken into account fees payable to other regulatory authorities in Hong Kong, fees charged by competition authorities in other jurisdictions and the Government's "user pays" principle in setting the level of fees to be charged. The maximum level of fees would generally reflect the complexity of the cases and resources needed to handle them. The Commission consulted stakeholders including the major chambers of commerce and small and medium enterprises associations on the fee proposal in April 2015 (paragraph 15 of the LegCo Brief). Two of the submissions suggested that the Commission should consider handling applications free of charge and one suggested lower fees, but all supported that if fees are chargeable, the Commission should be given discretion to reduce, waive or refund the fees.

16. L.N. 155 comes into operation on the day appointed for the commencement of Part 11 of Cap. 619, i.e. 14 December 2015⁴.

⁴ By the Competition Ordinance (Commencement) (No. 2) Notice 2015 (L.N. 156 of 2015), the uncommenced provisions (including Part 11) of Cap. 619 will come into operation on 14 December 2015.

L.N. 155 to L.N. 160 – Consultation with LegCo Panels

17. As advised by the Clerk to the Panel on Economic Development (ED Panel), the Administration consulted the ED Panel on L.N. 155 and L.N.156 at the meeting held on 27 April 2015 on guidelines and a Memorandum of Understanding to be signed between the Commission and CA for the purpose of coordinating the performance of their functions under the concurrent jurisdiction prepared by the Commission as required under Cap. 619 and the fees as recommended by the Commission payable for making an application under Cap. 619. Members did not raise any objection to the fees charged under L.N. 155, and exchanged views with the Commission on different subjects covered in the draft guidelines in relation to the first conduct rule, second conduct rule and merger rule under Cap. 619. Members noted that the Administration intended to bring Cap. 619 into full operation in December 2015 to allow time for the business sector to adjust their operations to bring them in line with Cap. 619. The Clerk to the Panel on Administration of Justice and Legal Services (AJLS Panel) advised that the AJLS Panel has not been consulted on L.N. 157 to L.N. 160.

PART II OTHER COMMENCEMENT NOTICES

Solicitors' Accounts (Amendment) Rules 2012
(Commencement) Notice (L.N. 161)

Accountant's Report (Amendment) Rules 2012
(Commencement) Notice (L.N. 162)

Solicitors (Professional Indemnity) (Amendment) Rules 2012
(Commencement) Notice (L.N. 163)

Solicitors' Practice (Amendment) Rules 2012
(Commencement) Notice (L.N. 164)

Foreign Lawyers Practice (Amendment) Rules 2012
(Commencement) Notice (L.N. 165)

18. By L.N. 161 to L.N. 165, the President of The Law Society of Hong Kong (the Law Society) has appointed 1 July 2016 as the day on which the following rules come into operation:-

- (a) the Solicitors' Accounts (Amendment) Rules 2012 (L.N. 151 of 2012);

- (b) the Accountant's Report (Amendment) Rules 2012 (L.N. 152 of 2012);
- (c) the Solicitors (Professional Indemnity) (Amendment) Rules 2012 (L.N. 153 of 2012);
- (d) the Solicitors' Practice (Amendment) Rules 2012 (L.N. 154 of 2012); and
- (e) the Foreign Lawyers Practice (Amendment) Rules 2012 (L.N. 155 of 2012).

19. L.N. 151 of 2012 to L.N. 155 of 2012 were made by the Council of the Law Society with the prior approval of the Chief Justice to codify the requirements for solicitors to account to clients for any interest earned on money deposited with them under the Solicitors' Accounts Rules (Cap. 159F), which previously were provided in a Practice Direction issued by the Law Society. The effect is to make it mandatory for solicitors to account for any interest earned if (a) the client's money deposited with them exceeds a specified amount; (b) the money has been retained in the account continuously for a specified period; and (c) the amount of the interest accrued exceeds \$500. The relevant requirements, as set out in L.N. 151 of 2012, include extending the application of the requirements to a solicitor corporation, a foreign lawyer and a foreign firm; providing certain exceptions to the solicitor's duty to pay client's money held or received by the solicitor into the client account; clarifying the extent of a solicitor's obligation to keep accounts; and empowering the Council of the Law Society to require a solicitor to produce the management accounts including monthly profit and loss accounts for inspection. L.N. 152 of 2012 to L.N. 155 of 2012 provide for amendments in incidental and related matters.

20. Upon our enquiry on the reasons for the time taken for bringing L.N. 151 of 2012 to L.N. 155 of 2012 into operation since their gazettal on 12 October 2012, the Law Society explained that time had been taken to do the necessary preparation work including (a) putting in place a waiver application system and preparing new waiver guidelines for the amended Cap. 159F; (b) revising the Manual on Solicitors' Accounting to align it with the amended Cap. 159F; (c) liaising with the Hong Kong Association of Banks and the Hong Kong Monetary Authority on the requirements of opening a "client account" under the amended Cap. 159F; and (d) organizing seminars to members to highlight the relevant amendments.

21. Members may refer to the LegCo Brief (with no file reference and undated) on L.N. 161 to L.N. 165 for background information.

22. As advised by the Clerk to the AJLS Panel, the AJLS Panel has not been consulted on L.N. 161 to L.N. 165.

PART III SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

United Nations Sanctions (Yemen) Regulation 2015 (L.N. 166)

United Nations Sanctions (Libya) Regulation 2011 (Amendment) Regulation 2015 (L.N. 167)

United Nations Sanctions (Côte d'Ivoire) Regulation 2015 (L.N. 168)

23. L.N. 166 to L.N. 168 are made by CE under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council.

L.N. 166

24. On 26 February 2014, the Security Council of the United Nations (UNSC) adopted Resolution 2140 (2014) imposing sanctions against Yemen in view of the serious human rights abuses and violence against civilians which constituted a threat to international peace and security in the region. The relevant sanctions have been implemented by the United Nations Sanctions (Yemen) Regulation (Cap. 537BJ). All provisions in Cap. 537BJ expired at midnight on 25 February 2015.

25. L.N. 166 is made to implement UNSC Resolution 2204 (2015), as adopted by UNSC on 24 February 2015, in respect of Yemen to renew the prohibition or sanction against:-

- (a) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (b) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by certain persons or entities; and
- (c) the entry into or transit through the Hong Kong Special Administrative Region (HKSAR) by certain persons.

26. These renewed sanctions against Yemen are essentially the same as those in the expired Cap. 537BJ.

27. L.N. 166 also gives effect to Resolution 2216 (2015) (as adopted by UNSC on 14 April 2015) imposing arms embargo against Yemen by:-

- (a) providing for the prohibition against the supply, sale, transfer or carriage of prohibited goods (i.e. arms or related materiel) to certain persons or entities;
- (b) providing for the prohibition against provision of assistance or training related to military activities or to the provision, maintenance or use of any prohibited goods to certain persons and entities;
- (c) providing for enforcement powers of the authorized officer including the power to investigate suspected ships, aircraft and vehicles and the power to require production of information and the power to enter and detain ships, aircrafts and vehicles. Non-compliance with the authorized officer's investigative power will be subject to criminal penalties⁵;
- (d) empowering an authorized officer to apply to a magistrate or judge for an order for forfeiture of any document, cargo or article seized; and
- (e) expanding the list of persons or entities designated by the Committee of the Security Council established under paragraph 19 of Resolution 2140 (2014) which are subject to the arms embargo measures.

28. L.N. 166 has come into operation when it was published in the Gazette on 17 July 2015. The provisions in L.N. 166 (except those relating to arms embargo measures) would expire at midnight on 26 February 2016.

29. Members may refer to the LegCo Brief (File Ref: CITB CR 75/53/9) issued by the Commerce and Economic Development Bureau in July 2015 for further information. A marked-up copy of the expired Cap. 537BJ showing the changes made by L.N. 166 is at Annex E to the LegCo Brief.

⁵ A charterer, operator or master of a ship, a charterer, operator or pilot in command of an aircraft or an operator or driver of a vehicle who without reasonable excuse, refuses or fails to comply with a request made by an authorized officer within the time specified by an authorized officer or, if no time is specified, within a reasonable time, commits an offence and is liable on conviction to a fine at level 6 (i.e. HK\$100,000) and to imprisonment for 6 months (see sections 12, 15 and 18 of L.N. 166 of 2015).

L.N. 167

30. Since 2011, UNSC has adopted various resolutions to impose sanctions against Libya having regard to serious violations of human rights and attacks against civilians in Libya. The United Nations Sanctions (Libya) Regulation 2011 (Cap. 537AW) was made and amended to implement these sanctions including arms embargo, prohibition of the provision of certain assistance and training, procurement of arms, travel ban on certain individuals, financial sanctions against certain persons and entities and ban of flights. The last amendment to Cap. 537AW was made by L.N. 143 of 2014 to give effect to Resolution 2146 (2014) and Resolution 2174 (2014) adopted by UNSC on 19 March 2014 and 27 August 2014 respectively to expand the scope of sanctions against Libya.

31. Determining that the situation in Libya continues to constitute a threat to international peace and security, UNSC adopted Resolution 2213 (2015) on 27 March 2015 to extend the sanctions or prohibitions imposed by Resolution 2146 (2014) in respect of the prevention of illicit oil exports. To implement Resolution 2213 (2015), L.N. 167 is made to amend Cap. 537AW to reflect the renewed prohibitions as follows:-

- (a) the prohibition against loading, transport or discharge of crude oil from Libya aboard certain ships;
- (b) the prohibition against engaging in certain financial transactions related to any crude oil from Libya aboard certain ships;
- (c) the prohibition against provision of certain services to certain ships under certain circumstances; and
- (d) the prohibition against certain ships from entering the waters of Hong Kong.

L.N. 167 also contains certain textual amendments.

32. Similar prohibitions which had been previously provided under L.N. 143 of 2014 expired at midnight on 18 March 2015. L.N. 167 has come into operation when it was published in the Gazette on 17 July 2015. The renewed prohibitions will expire at midnight on 31 March 2016.

33. Members may refer to the LegCo Brief (File Ref: CITB CR 95/53/1) issued by the Commerce and Economic Development Bureau in July 2015 for further information. The amendments made by L.N. 167 to Cap. 537AW are shown in Annex D to the LegCo Brief.

L.N. 168

34. Since 2004, UNSC has adopted a number of resolutions against Côte d'Ivoire imposing sanctions against Côte d'Ivoire or renewing certain of these sanctions upon their expiry in view of the persistent human rights violations against civilians which threaten the peace process in the region. These resolutions have been implemented by regulations made under Cap. 537. The last one, United Nations Sanctions (Côte d'Ivoire) Regulation 2014 (Cap. 537BK), already expired at midnight on 30 April 2015.

35. L.N. 168 is made to implement Resolution 2219 (2015), as adopted by UNSC on 28 April 2015, by providing for the prohibitions against:-

- (a) the supply, sale, transfer or carriage of arms or related lethal materiel to Côte d'Ivoire or certain persons connected with Côte d'Ivoire;
- (b) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (c) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities; and
- (d) entry into or transit through the HKSAR by certain persons and relevant exceptions.

36. The provisions of L.N. 168 which renew the sanctions against Côte d'Ivoire are essentially the same as those in the expired Cap. 537BK.

37. L.N. 168 has come into operation when it was published in the Gazette on 17 July 2015 and will expire at midnight on 30 April 2016.

38. Members may refer to the LegCo Brief (File Ref: CITB CR 136/53/1) issued by the Commerce and Economic Development Bureau in July 2015 for further information. A marked-up copy of the expired Cap. 537BK showing the changes made by L.N. 168 is at Annex D to the LegCo Brief.

Other information and remarks

39. Under section 3(5) of Cap. 537, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under section 3 of Cap. 537. Accordingly, L.N. 166 to L.N. 168 are not required to be tabled in the Legislative Council and are not subject to amendment by the Legislative Council. However, since they come

within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions (the Subcommittee), Members may consider referring them to the Subcommittee for its consideration.

40. As advised by the Clerk to the Subcommittee, the LegCo Briefs on L.N. 166 to L.N. 168 were circulated to members of the Subcommittee and all other Members vide LC Paper No. CB(1)1127/14-15 on 20 July 2015.

**Volunteer and Naval Volunteer Pensions Ordinance
(Amendment of Schedules) Order 2015**

(L.N. 169)

41. L.N. 169 is made by the Secretary for Labour and Welfare under section 35(2) of the Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202). It amends Schedules 3 to 8 to Cap. 202 to adjust the amounts and monthly rates for the payment of pensions, gratuities and other allowances payable under Cap. 202 in connection with the disablement or death of the officers and volunteers of the Hong Kong Volunteer Defence Corps and members of the Hong Kong Naval Volunteer Force who fought in defence of Hong Kong during the Second World War. Under section 35(2) of Cap. 202, the relevant amounts and monthly rates are adjusted in accordance with the percentage of increase declared in a notice made under section 4(1C) of the Pensions (Increase) Ordinance (Cap. 305).

42. By the Declaration of Increase in Pensions Notice 2015 (L.N. 113 of 2015) (the DIP Notice) gazetted on 5 June 2015 made under section 4(1C) of Cap. 305, an increase of 6.1% is declared in respect of a basic pension with effect from 1 April 2015 in accordance with the percentage of increase in the average monthly Consumer Price Index (A) (Average Index) of the 12 months ending on 31 March 2015 over the Average Index of the immediately preceding 12 months. Accordingly, pursuant to section 35(2) of Cap. 202, the amounts and monthly rates set out in Schedules 3 to 8 to Cap. 202 are adjusted in accordance with the percentage of increase (i.e. 6.1%) in respect of a basic pension declared in the DIP Notice. The relevant amounts and monthly rates were last revised in 2014 by L.N. 111 of 2014.

43. Section 35(4) of Cap. 202 provides that an order made under section 35(2) shall take effect on the same date as specified in the relevant notice made under Cap. 305. As the relevant DIP Notice came into effect on 1 April 2015, L.N. 169 is deemed to have come into operation on 1 April 2015.

44. Section 35(5) of Cap. 202 provides that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply in respect of an order made under section 35(2) of Cap. 202. L.N. 169 is therefore not required to be tabled in the LegCo and is not subject to amendment.

45. As advised by the Clerk to the Panel on Welfare Services (WS Panel), the WS Panel has not been consulted on L.N. 169.

46. According to paragraph 7 of the LegCo Brief issued by the Labour and Welfare Bureau on 13 July 2015 (File Ref: LWB CR 8/3231/92 Pt 18), the Administration considers that public consultation on L.N. 169 is not necessary as the adjustment of the amounts and monthly rates payable under Cap. 202 is a routine updating exercise.

Concluding Observations

47. No difficulties have been identified in the legal and drafting aspects of L.N. 155 to L.N. 169.

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