

For information

Legislative Council Panel on Economic Development
Report on the Work of the Competition Commission

Purpose

This paper presents an overview of the activities of the Competition Commission (“Commission”) since the full commencement of the Competition Ordinance (“Ordinance”) on 14 December 2015 and provides an outlook for 2017.

Compliance with the Ordinance and Competition Rules

2. Since 14 December 2015, there have been gradual and concrete changes in business practices and culture in Hong Kong which are indicative of growing awareness of the new law as well as attempts made by different sectors to comply with it. The following are especially worth noting:

- (a) the number and depth of the complaints and enquiries have been steadily growing, leading to a number of investigations;
- (b) trade/professional associations whose practices and codes of conduct contain elements that are adjudged to be in high risk of contravening the Ordinance have taken actions to amend/remove the problematic practices/provisions; and
- (c) from its communications with various businesses and trade associations, the Commission notes that many businesses have taken steps to review their business and trade practices to ensure that they do not fall foul of the new Ordinance.

Enforcement Overview

3. As at 28 February 2017, the Commission:
 - (a) received and processed over 2 000 complaints and enquiries. Among them, around 130 complaints were assessed further, of which 13% have proceeded to in-depth investigation stage;
 - (b) received intelligence from other law enforcement agencies, public bodies, informants and leniency applicants which inform the Commission's enforcement actions; and
 - (c) referred 70 cases in relation to telecom/broadcasting sector to the Communications Authority, 25 cases to other law enforcement agencies and the Competition Policy Advisory Group.
4. Of the complaints and enquiries received by the Commission, half of them relate to the First Conduct Rule¹, with alleged cartel conduct comprising the bulk. The proportion of related cases being pursued by the Commission is consistent with its enforcement priority.
5. In conducting its investigations, the Commission has begun to use its compulsory evidence gathering powers under the Ordinance to request businesses/individuals to provide documents and information; require individuals to appear before the Commission to answer questions; and enter and search premises. In general, businesses under investigation have shown a high degree of cooperation and have complied with the Commission's evidence gathering requests.
6. A number of cases are progressing towards enforcement outcomes in the first half of 2017, including the commencement of proceedings in the Competition Tribunal.

¹ Under the First Conduct Rule, an undertaking must not make or give effect to an agreement; engage in a concerted practice; or as a member of an association of undertakings, make or give effect to a decision, if the object or effect of the agreement, concerted practice or decision is to prevent, restrict or distort competition in Hong Kong.

7. To effectively carry out its enforcement function, it is important that the Commission has the right infrastructure. A case management system was developed largely in-house and internal protocols and procedures for dealing with complaints, initial assessments and investigations are in place. Considerable time and resources have also been dedicated to training enforcement staff.

8. In terms of case selection, the Commission will continue to be driven by complaints, queries, whistleblowers, leniency applications, referrals and other information it gains to identify potential contraventions of the Ordinance. In November 2015 the Commission published its Enforcement Policy and this has guided its choice of priority matters. As the Commission's database and understanding of specific competition issues grow, the Commission may identify specific sectors of the Hong Kong economy which require a specific enforcement focus.

Market Study and Policy Advice

9. In May 2016, the Commission released a report of its study into the residential building renovation and maintenance market in Hong Kong. The findings of this study have provided useful guidance for future investigations and facilitated further collaborations with relevant organisations and law enforcement agencies in combating the complex problem of bid-rigging.

10. The Commission is finalizing its study into the auto fuel market in Hong Kong and the report is expected to be released as soon as practicable. The scope of the study is not confined to auto fuel price but also on market structure, the current state of competition and possible ways to improve it.

11. The Commission will continue to explore suitable topics of public concern with significant implications on competition for conducting market studies.

12. Under the Ordinance, the Commission has a role to advise the Government on competition related issues. Indeed, as the competition authority in Hong Kong, the Commission has a duty to assist the Government (and by extension public bodies) in articulating their competition policy that will properly inform the public sector's activities and functions which affect the daily lives of people in Hong Kong. This is done by way of direct engagement with Government departments and public bodies on issues of public concern with a competition angle, reviewing existing or new legislations, regulations, schemes and policies and identifying whether there are competition concerns, and if so, how they may be addressed. To date, two advisory bulletins had been issued² and the Commission has also provided comments on one private member's bill³ and a new legislation⁴ which have been put before the Legislative Council.

Block Exemption Order

13. One application for a Block Exemption Order ("BEO") has been received from the Hong Kong Liner Shipping Association. In September 2016, the Commission published a notice of a proposed BEO for certain liner shipping agreements and a statement of reasons. Representations were received during the 3-month statutory consultation for the proposed BEO. A final decision on whether to issue a BEO will be made after consideration of the representations.

Engagement and Advocacy

14. Since the full commencement of the Ordinance, the Commission has adopted a more focused and thematic approach to public engagement. Nine seminars, two publications and eleven exhibitions on how to detect and prevent bid-rigging have been organized as part of a big anti-bid rigging campaign to raise public awareness and educate the public on how to protect themselves against this serious form of anti-competitive conduct.

² Including "Advice on Liquefied Petroleum Gas Supply Arrangement for 15 Public Rental Housing Estates" and "Competition concerns regarding certain provisions in the Codes of Conduct of the Hong Kong Institute of Architects and the Hong Kong Institute of Planners".

³ Professional Accountants (Amendment) Bill 2016

⁴ Arbitration (Amendment) Bill 2016

15. The Commission also continued its drive to increase public and business awareness of the Ordinance and encouraged compliance through outreach and engagement events. In 2016, the Commission held around 90 engagement briefings and meetings as well as six major seminars targeting both the general public and businesses, in particular small and medium enterprises (“SMEs”). It also participated in trade shows organised by other public organisations to promote the Ordinance and the spirit behind it among new start-ups and SMEs.

16. The Commission has made encouraging progress with its compliance project on trade and professional associations. Nineteen out of over twenty high-risk trade associations identified by the Commission have removed price restrictions and/or fee scales during the year as a result of the Commission’s engagement efforts. These associations are key to changing behaviour by their members and their compliance with the Ordinance has cast a widespread positive impact in the community.

17. In advocating its work and the benefits of competition to Hong Kong, the Commission has utilized multiple platforms to deliver its messages. The Commission’s outreach and publicity activities, including its TV series “Compete with Integrity” and Announcement of Public Interests, have scooped local and international accolades. Major international organisations such as the International Competition Network, and the World Bank Group have honoured the Commission with awards in light of the innovative approach to advocacy taken by the Commission. Also, the Commission’s educational materials have been widely used by businesses for staff training.

Outlook

18. Enforcement of the Ordinance will remain a major part of the Commission’s work and a number of investigations that have been undertaken since the full commencement of the Ordinance have reached an advanced stage. Upon completion of investigation, some cases involving serious anti-competitive conduct will be brought to the Competition Tribunal while others will result in enforcement outcomes that are proportional to the nature of the contravention.

19. To cope with the growing number of cases, the Commission will continue to strengthen its enforcement arm by training local professionals and leveraging overseas experience and expertise⁵ and raising the level of professional expertise in competition law enforcement and providing training and learning opportunities for our staff.

20. The Commission will also continue to work closely with local enforcement agencies to ensure an effective and concerted approach to tackling issues of common concerns such as bid rigging.

21. Advisory and advocacy efforts will be stepped up in the coming year to promote compliance with the Ordinance in the case of business and the spirit of competition in the case of the public sector. Apart from conducting ongoing outreach and engagement events in various formats, including briefings/meetings with different trades and industries as well as seminars and workshops targeting both the business sector and the public, the Commission will also undertake targeted campaigns with special focuses to reinforce the key concepts of the law and help the public and businesses recognise potential competition issues. It will also reach out to youngsters with tailored educational programmes.

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⁵ In December 2016, the Commission signed a Memorandum of Understanding with the Canadian Competition Bureau with the purpose of enhancing cooperation and information sharing between the two agencies as well as promoting the professional development of the Commission's staff.