

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 since the last report in March 2017 and provides an outlook for the coming year.

Compliance with the Competition Ordinance and Competition Rules

2. The Commission achieved a number of important milestones across its various facets of work in the second year of full implementation of the Competition Ordinance since 14 December 2015. As a result, both the business sector and the general public in Hong Kong are increasingly aware of the Ordinance and how it works. There have also been concrete changes in business practices and culture in compliance with the Ordinance. The following are especially worth noting:

- (a) two cartel cases were filed in the Competition Tribunal, drawing much attention and increasing awareness of the Ordinance;
- (b) upon the Commission's decision not to exempt Voluntary Discussion Agreements (VDAs)¹ among liner shipping companies, the Commission notes that shipping companies have taken actions to ensure compliance with its decision and the Ordinance, which include withdrawing from VDAs globally in the case of some companies;

¹ VDAs are agreements pursuant to which shipping liners discuss certain commercial matters relating to particular shipping routes.

- (c) the number and depth of the complaints and enquiries received have been steadily growing, not only from consumers and the private sector, but also from the public sector, indicating competition consideration plays an increasingly important role in the formulation and execution of public policy and programmes.

Enforcement Overview

3. Since the full commencement of the Ordinance in December 2015, the Commission has:

- (a) received and processed over 2 800 complaints and enquiries. Among them, around 180 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 99 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, about 60% of them relate to the First Conduct Rule², with alleged cartel conduct comprising the bulk. The proportion of cases being pursued by the Commission is consistent with its enforcement priority.

5. In March 2017, the Commission commenced its first case in the Competition Tribunal against five technology companies for suspected bid-rigging. The case concerns a tender related to the supply and installation of a new IT system for a social service organisation. Full hearing of the case is scheduled for June 2018.

² 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.

6. In August 2017, the Commission brought its second case to the Competition Tribunal against 10 construction and engineering companies for suspected market sharing and price fixing in relation to the provision of renovation services for a public rental housing estate. The case is scheduled for hearing in November 2018 tentatively. In addition to the two cases filed, a number of investigations are being pursued which may result in various enforcement outcomes.

7. As a further initiative to combat anti-competitive practices in tendering and procurement, the Commission published a set of model “Non-collusion clauses” and a “Non-collusion certificate” in December 2017. The model clauses aim to provide easily accessible references for procurers to safeguard procurements and seek recourse against cartel conduct.

8. To enhance its enforcement function and develop consistency and transparency, the Commission has been working on a framework for encouraging cooperation in its investigations as well as guidance on how it calculates penalties to be recommended to the Competition Tribunal. The Commission expects to make the framework public in the near future.

9. Guided by the principle that the goal of competition law is to bring the benefits of competition to consumers, the Commission will continue to prioritise investigations and enforcement actions that result in the greatest overall benefit to competition and consumers in Hong Kong.

Market Study and Policy Advice

10. In May 2017, the Commission released a report of its study into the auto-fuel market in Hong Kong. In addition to looking at auto-fuel prices and their movements, the Commission has identified a number of structural and behavioural features of the local auto-fuel market that are hindering competition and are likely to have contributed to the high auto-fuel prices in the territory. The Commission made recommendations in the report on how to address these issues and has been in touch with the relevant Government bureau/departments in this regard.

11. On the policy advisory front, the Commission has continued its efforts in liaising with the Government and public bodies on issues relating to competition. For example, the Commission provided advice on the Voluntary Health Insurance Scheme, the code of marketing and quality of formula milk for infants and a number of others that affect the daily lives of the people in Hong Kong.

Block Exemption Order

12. The Commission published its first Block Exemption Order (“BEO”) in August 2017 for Vessel Sharing Agreements (“VSAs”)³ between liner shipping companies, subject to certain conditions. The BEO, which will remain in effect for five years, was issued in response to an application from the Hong Kong Liner Shipping Association. The decision was made in light of the Commission’s assessment of the economic efficiencies generated by VSAs, and it also took account of the submissions received in various consultations. Having considered all relevant factors, the Commission declined to provide an exemption for VDAs.

13. The publication of this first BEO for a complex sector has provided a useful reference on the Commission’s assessment criteria and considerations on exemptions for the wider business community and potential applicants.

Application for a Decision

14. In December 2017, the Commission received an application for a decision in respect of the Code of Banking Practice from a number of institutions authorised under the Banking Ordinance. The Applicants seek a decision from the Commission confirming that the Code is excluded from the application of the First Conduct Rule on the basis that compliance with the Code is a legal requirement. The statutory public consultation on the application ended in February 2018 and the Commission will publish its decision after careful review of relevant information and the representations received.

³ VSAs (which include consortia, slot exchange agreements, joint service agreements and alliances) involve agreements between competitors in the liner shipping industry to cooperate on certain aspects of their operations.

Engagement and Advocacy

15. The Commission continues its momentum to increase public and business awareness of the Ordinance and to promote compliance through outreach and engagement events. In 2017, the Commission held 84 engagement briefings, conferences, media events, exhibitions as well as major seminars and workshops 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. Riding on the significant public attention on its second case before the Competition Tribunal, the Commission launched a multi-pronged thematic campaign on anti-market sharing to enhance public understanding of the concept and to strengthen detection of such conduct through a variety of advocacy initiatives.

17. With good progress in achieving a broad understanding of the Ordinance in the general public and businesses, the Commission has started reaching out to the younger generation. In February 2017, the Commission launched a youth programme to promote benefits brought by competition law with a creative advocacy contest targeting senior secondary students and teachers. The initiative was also extended to tertiary students. In addition, there were ongoing talks and workshops for secondary schools and higher education institutions.

18. The Commission’s outreach and publicity initiatives has continued to earn recognitions and are considered a model in the international enforcement community. Its advocacy efforts, including its thematic campaigns, educational videos and advisory bulletin, have received numerous accolades awarded by major international organisations. The Commission’s materials have also been widely used locally in both the private and public sectors for training purposes.

Outlook

19. To sustain the momentum of the Commission's work outlined above and to support its strategic goals and planned activities, the Government will enhance financial support for the Commission from 2018-19 onwards. Specifically, the annual Government subvention will increase from the current level of \$80 million to about \$102 million in 2018-19 and gradually to \$115 million in 2022-23 and beyond. Also, a dedicated funding of \$238 million for supporting the Commission's litigation work will be provided. With these additional resources, the Commission's plans and outlook for 2018-19 are set out below.

20. Enforcement of the Ordinance will remain a key focus of the Commission's work. The Commission will, in line with its enforcement priorities, continue to make use of its enforcement power in pursuing cases. The advancement of the two litigations in the Competition Tribunal is also important in establishing judicial precedents that interpret the Ordinance and provide guidance to the business and legal communities.

21. To cope with the growing enforcement and legal actions, the Commission will further strengthen its professional arm and raise the level of competition law expertise by leveraging overseas experience and providing targeted training and learning opportunities for its staff.

22. The Commission will strengthen its advisory function by playing a more active role and coordinate more closely with government departments, public bodies, and other law enforcement agencies, not only on enforcement actions, but also during early stages of formulation of public schemes and programmes.

23. To ensure that competition consideration is adequately taken into account during public policy formulation, the Commission will develop more tools, such as a handy guide on the Ordinance, and organise training conducted by international competition law experts to facilitate recognition and assessment of competition issues by the public sector and policy makers.

24. While outreach and advocacy targeting businesses and the community will carry on in various formats, the Commission is planning to take a step further by organising an international conference in Hong Kong. The event will be the Commission's first initiative to bring together local and international competition law experts to discuss and share their perspectives on important competition issues from a Hong Kong standpoint.

25. With the Ordinance being in full implementation for more than two years, the Commission is planning to review some of its guidelines and policies, which were drafted prior to the effective date of the Ordinance, to see if any refinements are necessary in light of its actual experience.

Competition Commission
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