

For discussion
on 12 June 2018

**Legislative Council Panel on
Food Safety and Environmental Hygiene
Subcommittee on Issues Relating to Public Markets**

Overall Landscape and Positioning of Public Markets

Public markets are to provide convenient access to fresh provisions for the benefit of the neighbourhood and the general public. This paper provides factual information on the overall landscape of public markets and besetting problems and anomalies, and sets out the Administration's views on the positioning of public markets and key issues for review.

Overview

2. As at 31 March 2018, the Food and Environmental Hygiene Department (FEHD) manages 99 public markets. Among them, 35 are standalone wet markets and 39 comprise both a wet market and a cooked food centre (CFC). Together with 25 standalone cooked food markets (CFMs), FEHD is managing a total of 138 venues. As at 31 March 2018, out of a total of 14 086 stalls, 12 779 (or 90.7%) were rented.

3. Outside FEHD, there are 61 markets owned by Link REIT, 22 by the Housing Authority and 33 by private developers. There are also some 850 supermarkets and numerous fresh provision shops across the territory.

Market vibrancy

4. Each public market has its own distinctive features. No direct comparison may be drawn among them. Where vibrancy is an issue, the manifestation is the low to very low patronage.

5. Another manifestation is the varied degree and nature of activity of the rented market stalls (sometimes even within the same public market). Some stalls are considered not active in terms of business, operating hours and/or operating days, while some are found to have been used for storage or other purposes.

6. The vibrancy of each public market depends on various factors including competition from fresh provision shops in the vicinity, pedestrian traffic, serving transport network, etc. Chief among them are the intertwining hardware and software issues.

Hardware issues

7. Many existing public markets suffer from outdated design and aging facilities, making daily management difficult.

Stall size

8. In early years, public markets were provided by the two former Municipal Councils primarily to re-site a large number of hawkers trading on-street in a bid to putting a stop to environmental nuisance and obstruction to pedestrians and vehicular traffic. Stall size (and trade mix indeed, as per paragraphs 15 and 16 below) was not determined with regard to any economic considerations but more a given, dictated by the floor area available in the market building, the number of hawkers on the street, and the products they sold.

9. Many market stalls are indeed extremely small.

Stall size (square metres)	Number of rented stalls
<2.50	4 475 (35.0%)
2.50-4.49	3 128 (24.5%)
5.00-12.49	2 826 (22.1%)
>=12.50	2 350 (18.4%)
Total	12 779 (100%)

Remark: Figures in brackets may not add up to total due to rounding

10. For instance, of some 8 900 stalls selling vegetables, fruits and dry goods, over 90% are less than 6.75 square metres (sqm) in size, which is the prevailing design standard, and half less than 2.5 sqm. Stalls of this size could hardly meet the present day needs of the operators or their customers. In a market in Kowloon, all of such 260 stalls are less than 6.75 sqm and 84% of them are less than 2.5 sqm. This, we consider, is the root cause of most management problems, including obstruction of passageways, dumping of waste outside the stall, etc. These physical constraints make such problems extensive and recurrent, and daily market management particularly difficult, despite repeated enforcement efforts, resulting in poor environmental hygiene condition of many of the public markets.

Passageway design

11. More than 60% of FEHD public markets were commissioned before 1990s. The design is outdated and facilities are aging. Passageways of the older markets are often narrow, to make room in the outset for accommodating more stall tenants re-sited from the street, now only the major reason of complaint from patrons. By design floor drains are put right along passageways, but they now work more to cause wet and slippery floors, particularly immediately in front of fish or vegetable stalls.

Air-conditioning

12. Another source of discontent is the lack of air conditioning which makes an unpleasant shopping or dining experience. Currently, 41 out of the 138 market venues managed by FEHD, or 30%, are air-conditioned, with a breakdown as follows –

	Air-conditioned		Not air-conditioned		Total
Wet market only	10		25		35
Wet market with CFC	Wet market	9	Wet market	30	39
	CFC	20	CFC	19	39
CFM	2		23		25
Total	41 (30%)		99 (70%)		138

13. Air-conditioning is now a standard provision for all public markets since a policy review in the early 1990s. For existing markets, 4 wet markets (one also with CFC) and 7 CFCs have met the tenant support threshold and are now in different stages of preparation for retrofitting with air-conditioning.

14. One should note, however, that the provision of air-conditioning systems in public markets may not have direct relevance to their vibrancy. We observe that some vibrant markets are not air-conditioned, while some air-conditioned markets are not at all vibrant. No doubt an important facility, but air-conditioning alone would not hold the key to a modern, vibrant market¹.

Management issues

Trade mix

15. Wet markets for the sale of fresh food provisions define the identity of public markets. But owing to historical reasons, stalls selling non-food dry goods make up a major part of some of the public markets. In terms of trade mix, the overall distribution is as follows –

Categories	Number of stalls
Fresh food provisions (vegetable, fruits, meat, fish, poultry etc.)	8 347 (65.3%)
Non-Food Related Dry Goods (clothes, footwear, linen etc.)	2 659 (20.8%)
Cooked food	944 (7.4%)
Ready-to-eat food (siu mei, lo mei, bakery etc.)	120 (0.9%)

¹ In his 2003 Report No. 41, the Director of Audit observed from the Market Stall Vacancy Rate (MSVR) of markets with and without A/C systems that the MSVR did not seem to support the belief that providing A/C systems can significantly improve the viability of public markets. Provision of A/C alone cannot enliven or revitalise a market. Other important factors, including the price, variety and quality of the commodities offered for sale, the standards of cleanliness, and the location of the market, also affect the business of the market stalls.

Other goods (newspaper, flowers etc.)	525 (4.1%)
Service Trade/ Storage	184 (1.4%)
Total	12 779 (100%)

Remark: Figures in brackets may not add up to total due to rounding

16. We note that about 20% of all the rented stalls in public markets are selling non-food dry goods, such as clothes, footwear, linen, etc. The percentage, however, may vary significantly from market to market. In a market on Hong Kong Island, for instance, some 160 stalls (or around 50% of all rented stalls) are selling non-food dry goods. Our observation is that stalls of this type are a major source of relatively inactive operation in that market, and indeed other markets as well.

Tenants composition

17. There is currently no pre-screening of potential tenants by their background and financial situation for admission into public markets. Upon commissioning of most public markets, the tenants were re-sited there for various reasons, with a majority of them coming from hawking on the street or substandard market facilities nearby. They were entitled to restricted auctions at a concessionary upset price in the absence of means tests, and the rental concession was set to run for their first tenancy agreement. When market stalls are vacated, they are rented to those meeting basic eligibility criteria (generally 18 years of age or above and an ordinarily resident in Hong Kong) through open auctions on a commercial basis. As at 31 March 2018, of some 12 780 stalls rented, 61% gained entry through open auctions, and 39%, through restricted auctions.

Multiple tenancy

18. Multiple tenancy is currently allowed. As open auctions are conducted on a purely commercial basis, among all 9 210 market tenants, around 22% are currently holding more than one stall. In extreme cases, some hold 17 stalls across several public markets and some even hold more than 20 stalls within the same market. Here are some relevant statistics -

Number of stalls rented by a single tenant	Number of tenants
1	7 201 (78.2%)
2	1 264 (13.7%)
3	396 (4.3%)
4	170 (1.8%)
5	75 (0.8%)
6-10	94 (1.0%)
>10	10 (0.1%)
Total	9 210 (100%)

Remark: Figures in brackets may not add up to total due to rounding

Tenancy agreement

19. The landlord-tenant relationship between FEHD and stall proprietors is governed by a tenancy agreement. Since taking over from the two former Municipal Councils, FEHD has continued to use their respective old versions of tenancy agreements for renewing tenancies with sitting tenants as they insist. Our first attempt in 2009 to align the different versions of tenancy agreements was met with strong objection from stakeholders and LegCo members. This results in a complicated landscape of different versions of tenancy agreements, often in the same market, with varied scope and heterogeneous terms, covering 4 clauses (Regional Council (RC) version), 19 clauses (Urban Council version), 53 clauses (FEHD 2009 version) and 13 clauses (FEHD current version) as the case may be. Coupled with entrenched practice and expectations from tenants, these anomalies are not conducive to daily enforcement, management reform and healthy competition abound. For instance –

- (a) tenancies are renewed every three years more or less automatically although there are no such terms in writing in FEHD and RC tenancy agreements;
- (b) there has been hardly any issue of one-month notice to prematurely terminate tenancy agreements by FEHD for whatever reasons, though allowed under tenancy agreements; and
- (c) for tenancy agreements signed before August 2010, tenants are still eligible for one-time transfer or succession of tenancy. This accounts

for 72% of all rented stalls.

Enforcement

20. Tenants are all required to comply with the conditions set out in the tenancy agreements, as well as provisions in the Public Health and Municipal Services Ordinance (Cap. 132) and the Public Market Regulation made thereunder. Breach of the legislative provisions may result in prosecution and conviction of a statutory offence.

21. Malpractices are commonly perceived, including obstruction of passageway, unauthorised change of use of stall, and inactive operation. Repeated convictions and breaches of the tenancy agreement may warrant termination of tenancy². Despite all enforcement efforts, the situation has not been satisfactory, given intrinsic difficulties like small stall size, grassroots tenants, leniency in public sentiments, strict compliance with procedural propriety, etc. Latest tenancy termination statistics are as follows –

Termination of tenancy	2015	2016	2017
Breach of tenancy terms	34	35	51
Conviction under law	7	7	1
Total (before appeal)	41	42	52

22. After tenancy termination, many may appeal to the Municipal Services Appeal Board following elaborate procedures. This is a protracted process, averaging over 5 months (longest 14) to complete in respect of the latest 24 appeal cases, of which 6 were allowed.

Rental and other charges

23. Unlike common commercial tenancies, tenants in public markets are

² Under the current tenancy agreements, FEHD can terminate the agreement where the tenants are convicted four times in 12 months or have breached the agreement terms continuously despite the issuance of three warning letters in six months. FEHD can also terminate the agreement immediately for conviction of serious offences or serious breach of terms. Examples include conviction of sale of meat not derived from an approved source, breach of “rest day” condition for poultry stalls, subletting of stalls, etc.

required to pay rents set out in the tenancy agreement, but **not** any management fees or rates³. Following the user pay principle, tenants of air-conditioned markets pay air-conditioning charges but there are certain exceptions and the running cost has not been fully recovered owing to historical reasons⁴.

24. Currently, the monthly rental level of tenants range from \$15 to \$96,000. Among them, over 20% are paying \$1,000 or less per month, and some 50% between \$1,001 and \$3,000. The breakdown is as follows -

Monthly Rental	Number of stalls
<=\$200	250 (2.0%)
\$201 – \$1,000	2 577 (20.2%)
\$1,001 – \$3,000	6 076 (47.5%)
\$3,001 – \$5,000	1 978 (15.5%)
\$5,001 – \$9,000	1 430 (11.2%)
>\$9,000	468 (3.7%)
Total	12 779 (100%)

Remark: Figures in brackets may not add up to total due to rounding

³ In its report of February 2009, the LegCo Public Accounts Committee expressed concern that rates had not been recovered from stall tenants, despite stipulation in the tenancy agreements that tenants were responsible for their rates payment. The Director of Audit recommended that the Government should explore recovering the rates payable by the tenants.

⁴ In general, air-conditioning charges are collected separately from rentals, a policy FEHD has abided by consistently for all tenants in newly-completed markets since 2002 and for all new tenants in air-conditioned markets since 2005. But for a number of stalls (12.3% of all rented stalls in air-conditioned markets), air-conditioning charges have been subsumed into the rentals since former municipal council days. The freezing of rentals between 1998 and 2017 has thus resulted in under-recovery of air-conditioning charges. And in three markets, owing to an RC decision in 1996, some of the tenants were temporarily exempted from paying air-conditioning charges pending revision of the tenancy terms, which has not happened due to the said rental freeze. These stalls account for 8.6% of all rented air-conditioned stalls.

25. The distribution of tenants by actual rental level as against the market rental value assessed by the Rating and Valuation Department (RVD)⁵ is as follows –

Rental Level (as a percentage of market rental value assessed by RVD)	Number of stalls
<30%	669 (5.2%)
30% – 49%	2 394 (18.7%)
50% – 69%	3 055 (23.9%)
70% – 99%	4 376 (34.2%)
>=100%	2 285 (17.9%)
Total	12 779 (100%)

Remark: Figures in brackets may not add up to total due to rounding

26. FEHD recorded a deficit of \$367 million in the management of public markets in 2017-18, forecast to rise to \$488 million in 2018-19. At this stage, the Government is only able to recover 69% of air-conditioning charges. The rental level of market stalls had not been adjusted for almost 20 years until a mild interim adjustment mechanism was put in place since July 2017 to freeze the widening gap⁶, pending a fundamental review.

Product price

27. FEHD does not control the price of the products sold in public markets. Tenants of public markets are free to determine and adjust the prices of their goods having regard to market forces and their operating costs. The general perception that products sold in FEHD markets must be cheaper than other outlets, therefore,

⁵ The Rating and Valuation Department assesses the market rental value of public market stalls with regard to the auction results of similar stalls in the same market and other FEHD markets, the location and facilities of the market, as well as the permitted trade, size, layout and position of the stalls. The market rental so assessed serves as a reference for determining upset price for auction. The actual market rental reflects the outcome of auction or fair price the market is willing to pay for use of the market stall, which may exceed the assessed market rental or upset price.

⁶ An annual adjustment catching up with the past year's inflation based on average movement of the Consumer Price Index (A).

may not be true. We commissioned a consultant to conduct a price survey in 2016⁷, the findings of which suggest that for some products, prices in FEHD markets are in fact higher than other markets or retail outlets.

28. Another finding is that stalls in FEHD markets that sell food items at the same given price (using the price at which an item under survey was most commonly sold as reference) were paying rents of a wide range, with the highest rent per sqm being as many as 431 times of the lowest.

Consultative mechanism

29. Following established practice, the Government would consult market tenants on proposals for improving the facilities (including the installation of air-conditioning systems) only after securing the support of the relevant Market Management Consultative Committee (“MMCC”). Each MMCC membership comprises tenants or their representatives, District Councillors, FEHD colleagues and representatives of other relevant departments. In practice, all tenants are welcome to join the meetings. With little formality, attendance at meetings fluctuates and some show up habitually. It is not uncommon that those regular and vocal tenants may have a disproportionately greater influence on the kinds of improvement proposals to be taken forward in a public market.

Direction for review

30. The above overall landscape presents a host of different problems besetting public markets. But it is also fair to observe that the performance of the 99 existing public markets varies across a whole spectrum from being exceptionally vibrant attracting patrons in the neighbourhood and afar to verging on the side of godown. Indeed each market is unique, with differences in terms of history, operating environment, tenants’ composition and attitude, patronage, local sentiments, etc. The Government is keenly aware of the situation and is adamant to turn the tide.

31. A comprehensive review is underway. We reckon that the current problem is the result of a complex host of public policies, political backdrop and

⁷ See LC Paper No. CB(2)1580/16-17(05).

historical legacies in play over the decades. In setting out the direction for review, we must not be bogged down by numerous symptoms on the surface without revisiting the very positioning of public markets and elucidating the key issues to address. Our initial thoughts are set out in the ensuing paragraphs.

Positioning of public markets

32. In recent years, with enhanced hawker management, the problems concerning on-street hawkers have largely been contained. Since the late 1990s, the main function that public markets used to serve as a measure to support the hawker policy was no longer valid. Public markets have become convenient places for the public to buy their daily necessities, in particular fresh provisions.

33. Meanwhile Hong Kong has changed with time. For shopping daily fresh provisions, there has been the mushrooming of outlets in modern wet markets, supermarkets and on-street fresh provisions shops, many in chains and clusters. The majority of the stock of public markets designed and built in the last century with little major refurbishment to date, do look and operate out of style and public expectations of the current time.

34. This is hardly satisfactory. To market tenants, inactive markets mean bad business. To the public, shopping daily provisions is a livelihood concern. To the Government, we must see to reasonable returns from public market operations, be it social, economic or financial, commensurate to the land, capital and recurrent resources we have invested.

35. A series of efforts have been undertaken to examine and address various hardware and management issues including a consultancy study which we reported to the previous Sub-Committee in 2015. There is little dispute that public markets should be positioned to be **one of the major sources of shopping fresh food provisions for the general public, which should be kept reasonably decent, clean, neat and tidy without being unduly upmarket.**

36. In taking forward the current comprehensive review, we see this positioning a bedrock, and, from lessons learnt, have identified a number of key issues which must be elucidated and addressed in order to implement the Market Modernization Programme (MMP) and bring management reform towards the

positioning we desire.

Key review issues

Commercial operations and welfare needs

37. Most, if not all, of the original tenants of public markets are hawkers re-sited from the streets and tenants of substandard market facilities. Public markets have long been seen as places providing job opportunities for the grassroots people. Concessions have been made, notably in the rent level in first tenancies (through a lower upset price in restricted auction not open to the general public).

38. On the other hand, there has never been a means test on the admission of tenants. The concessions were not meant to be long-term arrangements and should only have been valid within the first three years after moving into markets. This was to ensure a smooth transition and to assist hawkers in adapting to the mode of operation of public markets, based on a landlord-tenant relationship on commercial agreement terms and free market principles. In reality, there was a lengthy rental freeze for about two decades until a mild interim rental adjustment mechanism has started to take place in July 2017.

39. One important question to ask in any serious fundamental review is whether public markets should be run as a commercial platform on free market principles and whether there is any justified welfare or non-commercial elements that they may accommodate. In the event that there is a case for the latter, we would have to explore what mechanism should be put in place to benefit only the one intended by the public policy.

Level Playing Field

40. Fairness dictates that we must level the playing field in public markets as a public asset in which we have made substantial investment. Economics dictate that healthy competition on a level playing field would promote vibrancy of markets and bring out their best value. All parties win, be it tenants, members of the public or the Government.

41. This is, however, not happening in many public markets. Disparity of rentals among stalls, often in the same market, for example, is a major manifestation. At present, some 24% of all rented stalls are paying rents at a level below 50% of the market rental value assessed by RVD. A lower rental does not necessarily translate into a lower price of goods sold in a free market to the benefit of consumers, but may inadvertently provide incentives for shorter business hours, change of use of stall, or even tuning into back-end logistics support for shops and restaurants on high streets.

42. There are other areas where healthy and fair competition is a key principle to abide by, such as the issue of air-conditioning charges, turnover of tenants and tenancy renewal. They would be covered in the fundamental review.

Public interest to serve

43. In undergoing our comprehensive review for taking forward the MMP and management reform, tenants remain our key stakeholders to engage. We would not lose sight of the wider communities that public markets are designed to serve. As in many other areas of public policy, it is a question of balance, and one of how public interest will be best served.

Way Forward

44. The overall landscape presented above is a factual account related to existing public markets. It is also an illustration of some inherent anomalies that are often legacies of past development. Of note is the intertwining nature of these anomalies, which amplifies the difficulties in tackling them.

45. It is against such a complex background that we are taking forward the fundamental review. Key positioning and review issues are being identified and outlined above. We believe as we go into specific aspects of our review, hardware and management issues should be dealt with in parallel, in a bid to break the longstanding logjam and find concrete solutions to many current market problems we face.

46. Where necessary, the Government would also consider the need for consolidation of public markets to release precious land resources for more gainful

use to better serve the community. When considering whether an under-utilised market is to be closed, FEHD will take into account a host of factors, including vacancy rate, prospects for improvement, availability of alternative sources of fresh provision outlets in the vicinity, and the likely cost-effectiveness of upgrading works and the views of the relevant District Councils, etc.

Advice sought

47. Members are invited to note the current overall landscape of public markets, and give views on the review direction, market positioning and key issues identified.

Food and Health Bureau
Food and Environmental Hygiene Department
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