

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 (the Commission) since the last report in March 2018 and provides an outlook for the coming year.

OVERVIEW

2. Over the past year, the Commission achieved good progress across various aspects of its work. The following are especially worth noting:
 - (a) a third cartel case was filed before the Competition Tribunal (the Tribunal) in which direct enforcement action was brought against relevant individuals for the first time, driving home a deterrent message that both companies and individuals contravening the Competition Ordinance (the Ordinance) may expect to face the full force of the law;
 - (b) the liability-stage trials of the Commission's first two cartel cases filed in 2017 were completed, and it is expected that judgments would be handed down by the Tribunal in 2019;
 - (c) a decision on the Code of Banking Practice was published, providing useful references on the Commission's assessment criteria and considerations on exemptions for the wider business community and potential applicants;
 - (d) growing initiative from the public sector to engage with the Commission, reflected by a significant increase in the number of enquiries and requests for advice on possible competition

implications of new public policies and programmes; and

- (e) an inaugural international conference was held in November 2018 upon the approach of the third anniversary of the full commencement of the Ordinance, providing a timely avenue for Hong Kong to draw knowledge and experience from other jurisdictions and promote collaboration across sectors and jurisdictions.

ENFORCEMENT

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

- (a) received and processed over 3,500 complaints and enquiries. Among them, around 200 complaints have been escalated to the initial assessment phase, of which 15% have proceeded to in-depth investigation;
- (b) received intelligence from other law enforcement agencies, public bodies, informants and leniency applicants which facilitate the Commission's enforcement actions; and
- (c) referred 130 cases in relation to telecommunications/broadcasting sector to the Communications Authority, 29 cases to other law enforcement agencies and the Competition Policy Advisory Group.

4. Of the complaints and enquiries received by the Commission, about 60% relate to the First Conduct Rule¹, with alleged cartel conduct making up the bulk. The proportion of related cases being pursued by the Commission is consistent with its enforcement priority.

5. In September 2018, the Commission commenced proceedings in the Tribunal against three renovation companies and two individuals for alleged market sharing and coordinated pricing in the provision of renovation

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.

services in a housing estate. It was the first time the Commission brought direct enforcement action against individuals who were involved in the conduct. Full hearing of the case is expected to commence in 2020.

6. The liability trials for the Commission’s first two cartel cases were completed in 2018. During the interlocutory stages of the litigation, the Tribunal has made a number of important procedural rulings mostly in the Commission’s favour. In addition to the three cases filed, an increasingly diverse range of investigations encompassing both the First and Second² Conduct Rules are being pursued which may result in various enforcement outcomes.

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

APPLICATIONS FOR DECISIONS

8. Under the Ordinance, an undertaking may apply to the Commission for a decision as to whether or not an agreement or conduct is excluded or exempt from the application of the First or Second Conduct Rules.

9. The Commission published a Decision in October 2018 that the Code of Banking Practice (Code) is not excluded from the First Conduct Rule by the “legal requirements exclusion”³ in the Ordinance. Recognising that the Code is intended to promote good banking practices that may benefit service users in particular ways, the Commission at the same time confirmed that currently it has no intention to pursue further investigative or enforcement action in respect of the present version of the Code. In reaching its Decision, the Commission has carefully considered the application as well as the representations and submissions received in response to public consultation on the application.

² The Second Conduct Rule prohibits an undertaking with a substantial degree of market power from abusing that market power by engaging in conduct which harms competition in Hong Kong.

³ According to section 2 of Schedule 1 of the Ordinance, the First and Second Conduct Rules do not apply to an agreement or conduct to the extent that it is made or engaged in for the purpose of complying with a legal requirement.

10. In January 2019, the Commission received an application for a Decision from the Hong Kong Association of the Pharmaceutical Industry, which proposes to collect and distribute certain data on the sales of prescription and over-the-counter pharmaceutical products in Hong Kong and Macau. The Applicant seeks a Decision from the Commission confirming that the proposed survey is excluded from the First Conduct Rule as a result of the “economic efficiency exclusion”⁴ under the Ordinance. Public consultation on the application ended in March 2019 and the Commission will publish its Decision after reviewing relevant information and the representations received.

POLICY ADVISORY AND PUBLIC SECTOR ENGAGEMENT

11. The Commission published its third Advisory Bulletin in April 2018 to alert employers, employees and human resources professionals of the potential competition risks with regard to employment-related practices. The Bulletin was published in response to situations and complaints where businesses have engaged in employment-related practices that may give rise to competition concerns.

12. In May 2018, the Commission published a “Guide to Competition Ordinance” to assist the public sector and policy makers in identifying and assessing the competition risks and impacts of public policies and initiatives.

13. To further facilitate the public sector’s recognition and assessment of competition issues, a series of training sessions led by international competition law experts was conducted in September 2018 for senior officials from the Government (including law enforcement agencies), public bodies, and regulators. A follow-up training on competition issues in relation to disruptive innovation and technology was conducted in January 2019.

⁴ According to section 1 of Schedule 1 of the Ordinance, the First Conduct Rule does not apply to any agreement that -

- (a) contributes to improving production or distribution; or promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit;
- (b) does not impose on the undertakings concerned restrictions that are not indispensable to the attainment of the objectives stated in (a) above; 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.

14. With the various initiatives to further engage the public sector, the Commission has coordinated more closely with the Government and public bodies on different competition issues. During the year, the Commission provided policy advice to the Government and public bodies on around 30 policy matters such as market engagement under the Government's pro-innovation procurement policy, measures to combat ticket scalping and the Lift Modernisation Subsidy Scheme.

ADVOCACY AND EDUCATION

15. During the year, the Commission continued its drive to increase public and business awareness of the Ordinance and encouraged compliance through outreach and engagement events. The Commission organised over 90 engagement briefings, conferences, school talks, media events, exhibitions as well as 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 SMEs and start-ups.

16. The Commission started its sectoral business outreach and held two roundtable discussions in early 2019 to facilitate bilateral communications with the procurement and human resources sectors.

17. Engaging the younger generation has also been an important part of the Commission's advocacy work. In addition to ongoing talks and workshops for secondary schools, universities and tertiary institutions, the Commission rolled out a social media contest in late 2017, inviting local tertiary students to team up and formulate social media advocacy campaigns to promote the Ordinance. Riding on the campaign's winning piece, the Commission launched in November 2018 its debut micro movie which delineates the harm of market sharing and price fixing. The movie was widely shown on various online and outdoor platforms to reach out to a wider audience.

18. The Commission organised its inaugural international conference in November 2018, with the participation of over 300 representatives from the legal community, academic institutions, Government departments, the business sector and overseas competition agencies. To sustain the exchange and sharing, the Commission also launched a brand new online educational

portal which hosts a pool of practical tools and resources from different jurisdictions on various competition topics.

OUTLOOK

19. Enforcement of the Ordinance will remain a major part of the Commission's work. To enhance the deterrent effect of the law and encourage compliance, the Commission will continue to take enforcement actions not only against culpable businesses but also individuals involved in contraventions of the Ordinance, including by application to the Tribunal for individual fines as well as disqualification of directors.

20. Apart from bringing cases to the Tribunal for litigation, the Commission will also make use of different remedies as appropriate, including issuing warning notices, infringement notices or accepting commitments.

21. With growing needs in enforcement and legal actions, the Commission is looking to further improve its investigative capabilities by continued capacity and expertise building, as well as developing its in-house forensic information technology capabilities.

22. The Commission will also develop a cooperation policy so that parties involved in the Commission's investigations will have the opportunity to resolve any liability short of having to go through a trial. In addition, the Commission will continue to monitor its leniency policy and applications and consider whether any fine-tuning or modifications are necessary as it accumulates more experience.

23. The Commission will continue to play an active advisory role and coordinate more closely with the public sector during the early stages of policy making and public schemes formulation. It will also organise follow-up training sessions on specific competition topics for the public sector in 2019.

24. The Commission will carry on its creative approach to advocacy and education. It will further its outreach to businesses and provide competition law compliance training and tools for SMEs, and develop the compliance training capabilities of Hong Kong law firms that do not have competition law practices. The Commission will also continue to organise

business roundtables with different business constituencies and sectors to discuss its work and sector-specific competition issues.

ADVICE SOUGHT

25. Members are invited to note the report above.

Competition Commission
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