

For discussion
on 6 November 2018

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

Management Reform of Public Markets

Purpose

This paper briefs Members on the Government's latest thinking on reforming the management of public markets as a critical part of the on-going fundamental review.

Background

2. As unveiled in the Policy Address 2017, the Government will conduct a comprehensive review of existing public markets managed by the Food and Environmental Hygiene Department (FEHD) and formulate specific improvement measures for both the facilities and their management in a systematic manner.

3. Separately, the Ombudsman released two direct investigation reports in August 2018 covering rental management and regulation of market stalls in respect of public markets. The Ombudsman's major findings and recommendations, as well as the Government's response are summarised at **Annex**.

Market Positioning and Reform Principles

4. In our paper submitted to the Subcommittee in June 2018, we set out the directions for review. In terms of the **positioning of public markets**, we confirm that they **should 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**. In this context, we would also supplement that stall tenants should remain to be individuals in the capacity of small traders. We enter into tenancy with an individual, but not a limited company nor a partnership.

5. We have critically reviewed the key issues identified in the paper in

June and come up with reform principles to abide by as follows -

- (a) **Public markets should principally be operating on a commercial basis allowing market forces to play in full swing.** Any welfare need deviating from this basic commercial principle would need to be justified and be supported by a fair and transparent mechanism in identifying and benefitting only the ones intended by the public policy.
- (b) **Individual stalls should be allowed to compete on a level-playing field.** Fairness and economics dictate that we should level the playing field to maximise the benefits to all.
- (c) **Public markets as municipal infrastructure should ultimately serve the public interest benefitting the community at large.** In doing so, we are mindful of balancing the interest of other stakeholders where justified.

Directions for Management Reform

6. Given the above market positioning and reform principles, we seek to pursue a new operation mode primarily along the following directions —

- (a) A proper trade mix should be achieved in future wet markets and be subject to review from time to time to ensure that sufficient choices for fresh provisions are provided.
- (b) Tenancy should continue to be open to individuals as small traders, but multiple tenancies should in general be disallowed.
- (c) In general, open auction should be adopted to admit stall tenants on commercial terms with Government as the landlord.
- (d) There should be a healthy rental adjustment mechanism that would ensure a level reflecting the full economic value of stalls. For instance, rental level for renewal should be premised upon a market reference rental assessed at the time by the Government or be determined through the market force.
- (e) Tenants should shoulder reasonable outgoings in the running of a market on par with a commercial setting (such as air conditioning charges, rates and management fees).

- (f) Renewal of tenancy should not be taken for granted, which should be underpinned by a fair mechanism to promote healthy turnover of tenants and admission of new small traders, taking into account past performance of sitting tenants.
- (g) There should be no succession or transfer of tenancies based on family ties or otherwise.
- (h) Management rules in the daily operation of markets should be vigorously enforced.
- (i) The management terms should be clearly spelt out before open auctions and in the tenancy agreement to be entered into by the successful bidders.

7. The dedicated team in FEHD is reviewing the whole approach and developing the ideas above further for translation into concrete management measures.

New markets

8. Notably, in building a new generation of public markets, our mission is no longer to re-site a great number of hawkers on the street for public hygiene and traffic management purposes, as happened decades ago. There is indeed great room for us to pursue along the above directions and press for a management package grounded on firm principles. Total transparency would be ensured so that potential tenants may assess the proposed terms and openly bid for a stall on their own accord. Compliance with the tenancy terms and legislative provisions would be strictly enforced against those successful in bidding.

Existing markets

9. On the other hand, the existing 99 public markets, involving some 9,000 tenants holding over 12,600 stalls as at 30 September 2018, may call for a more pragmatic approach taking into account the diversities on the ground¹. The landscape is further complicated by the fact that around 60% of the tenants gained entry through open auctions, and nearly 40% through restricted auctions

¹ First, the sitting tenants harbour different expectations on the Government's management of public markets, not always justified though. Second, the individual situations of the 99 markets vary across a wide spectrum, some exceedingly vibrant in daily running at the one end and some bordering a warehouse or logistic centre at the other.

with a total of four versions of tenancy agreement in force².

Market Modernisation Programme (MMP) candidates³

10. Priorities would need to be set for the MMP. We believe that the MMP would provide a prime opportunity to review management issues in context and bring in a new running model for existing public markets. A full closure period for works, while being inevitable, would facilitate a management reform with the moving out of all sitting tenants and re-admission of some.

11. But most importantly, the hefty financial investment to be made into totally overhauling a candidate MMP market with brand new layout design (necessarily bigger stalls and wider passageways), air conditioning systems, etc. is meant to bring significant, real change **only** to those sitting tenants who are prepared to pursue active operation and brave the present day competition for their own good and to benefit the public at large. To join the MMP, they will need to come to terms with the new management rules to be made in the reform directions set out above while some flexibility may be allowed⁴.

Markets waiting for their MMP turn

12. Naturally, it would take time to upgrade the hardware and reform the management of existing FEHD markets one by one through the MMP route. As a matter of principle and fairness, management reform should not be confined to those FEHD markets joining the MMP. There is a serious case⁵ for us to see how best to address as far as possible long-standing management issues of some existing FEHD markets before their MMP turn is due.

13. While a total management reform package will be applicable to MMP candidate markets, we would consider certain management measures that are feasible for standalone implementation with prospect of quick results. We will

² See paragraphs 17 and 19 of LC Paper No. CB(2)1544/17-18(01) for discussion at the Subcommittee meeting on 12 June 2018.

³ In the 2018 Policy Address, the CE highlighted the proposed overhaul of Aberdeen Market as a pioneering MMP project. Engagement with its sitting tenants has been underway. At the same time, we are making preparations for identifying other worthy existing FEHD markets for joining the MMP and engaging their sitting tenants along the same reform directions

⁴ Given the historical background of FEHD markets and the need for smoothening the transition to a new management mode, certain flexibility may be required to knock out a holistic hardware-cum-software package in a candidate MMP market. For example, sitting tenants wishing to return to the overhauled market may benefit from a certain restricted auction but there may be no guarantee of a stall in some cases. And returning tenants must pay for a new rental reflecting the full economic value of the new stalls, but a certain concession may be possible for the first three-year tenancy.

⁵ For example, when the Ombudsman's Reports were released in August 2018, there was a particular public outcry over the great discrepancy in stall rentals between tenants enjoying a prolonged rental concession through restricted auctions and surrender of itinerant hawker licences and those paying market rental through open auctions. Another example is that, owing to historical reasons, of all tenants in air-conditioned markets, some 20% are not paying full air-conditioning charges as the other 80% do, contrary to the user-pay principle.

proceed with prudence and common sense.

Advice Sought

14. Members are invited to give views on the directions for management reform as set out above.

Food and Health Bureau

Food and Environmental Hygiene Department

November 2018

The Ombudsman's Direct Investigation Reports

A. The Ombudsman's Major Findings and Recommendations

Rental Management of Market Stalls

1. Regarding rental management, five inadequacies have been identified –
 - i. low level of and great disparity among stall rentals result in unlevel playing field for tenants,
 - ii. automatic tenancy renewal reduces chances for others to rent stalls,
 - iii. succession still allowed for most stalls, thus affecting other people's right to bid for the operation of those stalls
 - iv. no limit on the number of stalls to be rented by a single person gives rise to abuses and reduces consumers' points of purchase, and
 - v. "frozen stalls" left idle for years, resulting in serious wastage of public resources.

2. The Ombudsman thus urges the Food and Environmental Hygiene Department (FEHD) -
 - i. to review the practice of setting upset prices below the market reference rental⁶ (MRR) at auctions;
 - ii. to devise a comprehensive and effective rental adjustment mechanism;
 - iii. to review the current tenancy renewal system to allow more opportunities for the public to bid for stall tenancies, at the same time giving priority to existing tenants with satisfactory performance;

⁶ In assessing MRR, the Rating and Valuation Department makes reference 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 MRR 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 MRR or upset price.

- iv. to set up a database to keep records of tenancy succession applications and to review the processing of such applications;
- v. to set a reasonable limit to the number of stalls that a tenant can rent in a market, taking into account the actual situation of individual markets; and
- vi. to include the same clause in all versions of tenancy agreements to spell out the Government's power and responsibilities for carrying out works in public markets, and set out the requirements and rules for tenants.

Regulation of Market Stalls

3. Regarding regulation of market stalls, four major irregularities have been identified –

- i. occupation of public passageways,
- ii. unauthorized change of use of stalls,
- iii. inadequate business hours, and
- iv. subletting of idling stalls.

4. The Ombudsman thus urges FEHD –

- i. to review the existing items for daily inspection and redetermine a suitable inspection frequency for each item, and step up its monitoring of frontline staff;
- ii. to strictly instruct market management staff at all levels to actively tackle and diligently follow up on all irregularities found at market stalls;
- iii. to fully review the modus operandi of its staff and those of the contractors, and require all staff to rigorously inspect and pursue cases of tenants persistently and/or seriously in breach of the rules and regulations, and to strictly adhere to the established enforcement guidelines;
- iv. to strengthen supervision of and remind market management staff at all levels to carry out thorough enforcement actions against

different irregularities detected at the same stall;

- v. to continue studying the feasibility of stipulating minimum daily business hours of stalls in tenancy agreements;
- vi. to study why some stalls have been idling for prolonged periods and formulate a strategy to tackle the problem;
- vii. to review the registered assistants system and consider setting suitable conditions and restrictions on the identity of registered assistants; and
- viii. by way of revising the tenancy agreements, to require all tenants to display their business registration certificates at their stalls.

B. The Government's Response

5. In overall terms, we agree with the Ombudsman's findings and recommendations. Some of the Ombudsman's recommendations have already been implemented, and we are actively following up with the others.⁷

6. Importantly, the unsatisfactory situations in public markets as pointed out by the Ombudsman have all along been major concerns to the Government, and are subjects being tackled by the fundamental review on public markets underway since 2017 and being broached by this Subcommittee since its operation in March 2018.

⁷ For regulation of market stalls, in the short run, FEHD have already put in place specific enforcement measures, including the following –

- Since May 2016, FEHD has set up a Market Task Force to enhance the enforcement of the requirements under the law and tenancy agreement (including unlawful occupation of market passageway), to take actions against recalcitrant stall tenants who ignore warnings and repeatedly violate the law or fail to comply with the terms and conditions of the tenancy agreement, and to trigger the termination mechanism to penalize such tenants. To sustain the impact of such work, FEHD has increased the manpower of the Market Task Force in June 2018 to step up inspection and enforcement. The number of prosecutions have increased from 1 658 in 2015 to 2 065 in 2016 and 1 893 in 2017. FEHD will redeploy manpower to support the work of the Market Task Force.
- FEHD has instructed market management staff of all levels to follow up on all irregularities proactively and strictly in a sustainable manner, and to take appropriate law/tenancy enforcement actions.
- Since early 2018, FEHD has required market staff of all districts to take effort in inspection against inactive market stalls, and to take enforcement actions under the "warning letter system". From early 2018 to end June, 334 verbal warnings and 250 warning letters were issued, leading to termination of the tenancies of four stalls, and 185 tenants surrendering their tenancies.

FEHD will proactively follow up on relevant recommendations regarding enhancement of the effectiveness in enforcing the requirements under tenancy agreements, including considering the incorporation of a clause relating to business registration certificate in the current Urban Council's tenancy agreements and Regional Council's tenancy agreements, so as to enhance the efficiency in investigation of suspected subletting cases.

7. Notably, at the 3rd Subcommittee meeting held on 12 June 2018, we gave a factual account of 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.⁸ It essentially covers most, if not all, the unsatisfactory situations identified in the Ombudsman's Reports, not with such graphic examples though. In sum, we reckon that the current problems are the result of a complex host of public policies, political backdrop and historical legacies in play over the decades.

8. On the hardware side, one of the root causes of the less than satisfactory operation of some existing FEHD markets is the outdated design focusing on re-siting, within the building space available, as many hawkers on the street as possible, which results in small stalls and narrow passageways and in turn entrenches and aggravates daily management problems. This is being addressed by contemporary design befitting retail needs today, through our 10-year Market Modernizations Programme⁹ and the building of a new generation of public markets.¹⁰

9. We consider that the new hardware design would only be effective in achieving sustainable vibrancy in our new or overhauled public markets if taken together with management improvement measures and new running models. Otherwise, one can envisage a quick deterioration of the operating environment despite all the new design. For example, a root cause of insufficient business hours, change of use and subletting of stalls may be attributed to the current low rental level of a great number of market stalls which does not fully reflect their full economic value. This calls for management reform over stall bidding, rental adjustment, tenancy renewal, tenancy succession, multiple tenancy holding, enforcement of tenancy terms, etc.

⁸ See LC Paper No. CB(2)1544/17-18(01).

⁹ The 2018-19 Budget announced that a funding of \$2 billion had been earmarked for implementing the MMP, as reported to the Subcommittee at its 2nd and 3rd meetings on 10 April and 12 June 2018. See LC Paper No. CB(2)1011/17-18(01) and CB(2)1544/17-18(03).

¹⁰ See separate paper for discussion at the Subcommittee on 6 November 2018.