

**For discussion  
on 21 January 2019**

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

**Rental adjustment mechanism for public market stalls**

**Purpose**

This paper briefs Members on the current situation regarding public market rental adjustment mechanism and the Government's preliminary direction on its review.

**Background**

*Rental of the first tenancy agreement of public market stalls*

2. Public market stalls are currently let out in two ways:
  - (a) Open auctions: stalls are rented on a commercial basis to those meeting basic eligibility criteria (generally residents aged 18 years or above and ordinarily residing in Hong Kong); and
  - (b) Restricted auctions: stalls are rented at a concessionary upset price and the rental concession is set to run for the tenants' first tenancy agreement<sup>1</sup>. Most of these tenants are hawkers re-sited from the streets to improve street hygiene and obstruction in the early days, or original tenants of substandard or closed markets.

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<sup>1</sup> The concessions, which should only be valid within the first three-year tenancy after moving into the markets, were not meant to be long-term arrangements. Based on the landlord-tenant relationship established on commercial agreement terms and free market principles, the aim was to assist hawkers in adapting to the mode of operation of public markets, and assist existing tenants in adapting to the new operating environment of public markets they have relocated to, ensuring a smooth transition. In fact, there was a lengthy rental freeze for about two decades. As a result, some tenants have been enjoying the concessions ever since the end of the first tenancy agreement. This leads to disparity of rentals among stalls (often in the same market), with issues such as an unlevel playing field, inactive operation, subletting of stalls, etc..

The Government will not conduct background checks or means tests on the applicants/tenants before letting out the stalls.

3. The actual rental level of the first tenancy agreement of public market stalls depends on the reference rental<sup>2</sup> of public market stalls as assessed by the Rating and Valuation Department (RVD), the concessions offered under the circumstances mentioned in paragraph 2(b) above and the relevant auction outcome. Overall speaking, public market stall rental is driven by market forces.

#### *Rental adjustment mechanism*

4. Although the two former Municipal Councils (MCs) had adopted different public market stall rental adjustment mechanisms of their own, both of them used the reference rental assessed by the RVD as the basis for determining rental level upon stall tenancy renewal to gradually adjust the rentals.

5. In 1998, taking into account the economic situation at that time, the two former Provisional MCs reduced the rentals of public market stalls by 30% across-the-board, and the rentals had then been frozen at that level. The Food and Environmental Hygiene Department (FEHD) was established in 2000 and took up the management of the public markets previously managed by the two former MCs. The power of determining the rentals of public market stalls is vested in the Director of Food and Environmental Hygiene under section 6 of the Public Markets Regulation (Cap. 132BO).

6. In May 2001, the Government put forward to the Legislative Council Panel on Food Safety and Environmental Hygiene (the Panel) a proposal for aligning the market rental adjustment mechanisms of the two former MCs. Determination of rental under the proposal was based on the reference rental assessed by the RVD. However, in view of the economic downturn at the time, the Panel considered that it was not an opportune time to increase stall

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<sup>2</sup> In assessing the reference rental, the RVD 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 within the market. The reference rental assessed serves only as a reference for determining upset price for auction. The actual rentals reflect the outcome of auction or the fair price the market is willing to pay for use of the market stall, which may exceed the assessed reference rental or upset price.

rentals. Thus, no consensus was reached on the rental adjustment mechanism.

7. It was recommended in Report No. 51 of the Director of Audit published in 2008 (the Report) that the Government should put up as soon as possible a suitable and aligned rental adjustment mechanism. The Report also pointed out that the low rentals of some stalls might increase the risk of market stalls subletting for financial gains. The Public Accounts Committee urged the Government to work out an appropriate mechanism as soon as possible to address the problem of rental disparity.

8. In the past few years, the Government had put forward three different rental adjustment proposals for consulting the Panel. However, all of these proposals were not supported by the Panel.

### **Recent Development**

9. Pending the comprehensive review on rental adjustment mechanism which may take some time, the Government has put forward a transitional mechanism to adjust the rental level since 1 July 2017. Rentals of public market stalls will be adjusted annually upon renewal of tenancy agreement or on the due date for rental adjustment as specified in the tenancy agreement, in line with the average of the year-on-year rates of change in Consumer Price Index (A) in the 12-month period six months before renewal of tenancy agreement or preceding the due date for rental adjustment.

10. On the other hand, the Office of the Ombudsman (the Ombudsman) released a Direct Investigation Report on FEHD's rental management of market stalls in August 2018. It was pointed out that the low level of and great disparity among stall rentals had resulted in an unlevel playing field for tenants. The Ombudsman considered that FEHD should devise an effective and step-by-step rental adjustment mechanism in a comprehensive manner, with a view to resolving the problems relating to market stall rentals so as to foster a healthier business environment which is conducive to fair competition.

## Latest Position of Rental Level

11. As at 30 November 2018, nearly 12,600 stalls in public markets and cooked food markets under the FEHD were let out. The rentals of nearly 80% of such stalls were lower than the reference rental assessed by the RVD. The breakdown is as follows:

<b>Rental level (as a percentage of the reference rental assessed by the RVD)</b>	<b>Number of stalls (Percentage)</b>
<30%	673 (5.36%)
30% – 49%	2,303 (18.34%)
50% – 69%	2,969 (23.64%)
70% – 99%	4,062 (32.34%)
>=100%	2,553 (20.33%)
<b>Total</b>	<b>12,560 (100%)</b>

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

12. Currently, the monthly rental level of tenants ranges from \$15 to \$96,000. Over 20% of stalls' rental is \$1,000 per month or less and about 50% from \$1,001 to \$3,000. In other words, about 70% of the stalls have a monthly rental of \$3,000 or less. The breakdown is as follows-

<b>Monthly rental</b>	<b>Number of stalls (Percentage)</b>
<=\$200	247 (1.96%)
\$201 – \$1,000	2,446 (19.47%)
\$1,001 – \$3,000	5,955 (47.41%)
\$3,001 – \$5,000	1,985 (15.80%)
\$5,001 – \$9,000	1,458 (11.61%)
>\$9,000	469 (3.73%)
<b>Total</b>	<b>12,560 (100%)</b>

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

13. In 2017-18, FEHD recorded a deficit of \$370 million in the management of public markets. The deficit is expected to rise to \$488 million in 2018-19.

## **Direction for the Review of Rental Adjustment Mechanism**

14. We will consider the direction for the new rental adjustment mechanism in line with the reform principles that should be observed, as set out in the papers<sup>3</sup> submitted to the Subcommittee in June and November 2018. Among these principles, the key ones in this respect include allowing market forces to play in full swing, and individual stalls to compete on a level-playing field, and serving the public interest.

15. At present, about 80% of the stall rentals are below the reference rental assessed by the RVD whilst nearly 25% are even at a level below 50% of the reference rental. As prices are affected by a wide range of factors, a lower rental does not necessarily translate into a lower product prices thus benefitting consumers. However, it may inadvertently incentivize shorter business hours, change of use of stalls, or even turning into back-end logistics support for shops and restaurants on high streets.

16. Therefore, we hope to nurture a fair business environment and encourage active operation of market tenant through the implementation of the Market Modernisation Programme (MMP) in tandem with a review of the rental adjustment mechanism. In principle, the new rental determination and adjustment mechanism will ensure a level reflecting the full economic value of stalls. For instance, rental level for renewal of tenancies should be premised upon the reference rental assessed at the time by the RVD or be determined by market forces.

17. As regards other existing markets, in terms of principles and fairness, management reforms (including rental adjustment mechanism) should not be limited to markets that have been included into MMP and new markets. We will consider this issue in detail in a prudent and reasonable manner.

## **Way Forward**

18. We will not underestimate the difficulty of formulating a rental adjustment mechanism which would be widely accepted by stakeholders. Nevertheless, such a mechanism is an integral part of effective market management. As such, we will seek stakeholders' views through different

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<sup>3</sup> Please refer to CB(2)1544/17-18(01) and CB(2)186/18-19(03) for details.

channels, so as to formulate a practically feasible rental adjustment mechanism which can help maintain the competitiveness and vibrancy of public markets.

### **Advice Sought**

19. Members are invited to give views on the above matters.

**Food and Health Bureau**

**Food and Environmental Hygiene Department**

**January 2019**