

# 立法會

## *Legislative Council*

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### **Panel on Food Safety and Environmental Hygiene**

### **Subcommittee on Issues Relating to Public Markets**

### **Background brief prepared by the Legislative Council Secretariat for the meeting on 21 January 2019**

### **Issues relating to the public market rental adjustment mechanism**

#### **Purpose**

This paper provides background information on issues relating to the public market rental adjustment mechanism and summarizes the major views and concerns expressed by Members on the subject at meetings of the Panel on Food Safety and Environmental Hygiene ("the Panel") and the Subcommittee on Issues Relating to Public Markets formed under the Panel in the Fifth Legislative Council ("the former Subcommittee").

#### **Background**

2. According to the Administration, public markets were provided by the two former Municipal Councils ("MCs") in early years for resiting hawkers with a view to improving street hygiene and alleviating street obstruction. Following the dissolution of the former MCs on 1 January 2000, the Food and Environmental Hygiene Department ("FEHD") has taken over the responsibility for managing public markets. FEHD is currently managing 74 wet markets and over 60% of them were built before 1990s (the newest one opened in 2008).

3. In the past when public markets were managed by the two former MCs, the rentals of public market stalls were, in general, set according to open auction prices. The upset auction prices of public market stalls were determined with reference to the so-called "open market rental" ("OMR") as assessed by the Rating and Valuation Department ("RVD"). To assist the hawkers affected by the resiting projects to adapt to the trading environment of public markets, the

two former MCs made concessionary rental arrangements by allowing these hawkers to bid for stalls with upset prices set at a level below OMR, which would become the rentals of the first tenancy (i.e. usually for a period of three years). Besides, a voluntary surrender scheme for itinerant hawker licences was implemented in the 1990s under which itinerant hawkers were allowed to pay concessionary monthly rentals for their market stalls in the first tenancy.

4. When the tenancy agreements were renewed, OMR was used as the basis for assessment of the rentals by the two former MCs regardless of the rental arrangements under which the first tenancy agreements were made. All tenants paying rentals below OMR would have their rentals adjusted with reference to the difference between their actual rentals and OMR when their tenancy agreements were renewed. In 1998, due to the then poor state of economy, the two former MCs reduced the rentals of public market stalls by 30% across-the-board. The rental freeze had been extended for many times.

5. In Report No. 64 of the Public Accounts Committee ("PAC") published in 2015, the Committee expressed grave concern that FEHD had not fully implemented its follow-up actions on the issues found in the precedent audit review in 2008<sup>1</sup>, including many stall tenants paying lower-than-market rentals, rates paid on behalf of stall tenants not recovered, and under-recovery of air-conditioning costs from stall tenants.<sup>2</sup>

6. In March 2017, the Administration advised the Panel that pending a comprehensive review of the public market rental adjustment mechanism, upon expiry of the rental freeze on 1 July 2017, an arrangement would be put in place to adjust market rentals annually to catch up with inflation.

### **Members' major views and concerns**

7. Members' major views and concerns on the subject are summarized in the ensuing paragraphs.

#### The proposal for rental adjustment mechanism in 2013

8. The Panel had considered the Administration's proposals to align different public market tenancy agreements in 2009, 2010 and 2013. Under the revised proposal in 2013, the public market stall rentals would be adjusted in accordance with the movement of the average Consumer Price Index (A)

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<sup>1</sup> Chapter 3 of Part 8 of the PAC Report No. 51 on "Management of public markets" published in February 2009.

<sup>2</sup> Chapter 3 of Part 4 of the PAC Report No. 64 on "Public cooked food markets managed by FEHD") published in July 2015.

("CPI(A)") of the past three years, with the increase capped at 5% or OMR, whichever was the lower. For stall tenants who were paying rentals above the OMR level, their rentals would be adjusted downward to the OMR level. By the same token, for those who were paying the same as the OMR level, their rentals would remain unchanged. While the Administration considered that the effect of rental adjustment under this revised proposal would be mild and affordable to market stall operators, Members took the view that any increase in the public market stall rentals would have an adverse impact on the social functions of public markets, which included serving as the major sources of fresh provisions for the public at large and providing employment opportunities for the grassroots.

9. Members generally agreed that the Administration should subsidize the operation of public markets, and stressed that they would not support proposals that would increase the rentals of public market stalls unless the operating environment of public markets had been substantially improved. Members considered that the Administration should conduct a comprehensive review of the policy and usage of public markets and improve their operating environment before considering the new rental adjustment mechanism.

10. In light of Members' views, the Administration commissioned a consultant to put forward proposals for improving the operating environment of public markets. The Administration briefed Members on the key findings of the consultancy study at the meeting of the former Subcommittee on 20 January 2015. Members were advised that taking into consideration the findings of the consultancy study, the Administration agreed to take forward proposals for improving the operating environment of public markets. However, it was also considered necessary to identify a reasonable rental adjustment mechanism that would enable the rentals of public market stalls to catch up with the rentals of broadly comparable stalls, in particular other stalls in public markets which were allocated through open bidding in the previous few years.

#### Extension of rental freeze period

11. At the meeting of the former Subcommittee on 29 June 2015, the Administration briefed Members on its latest position on matters related to public market stall rentals. The Administration advised that it would re-examine the rental adjustment mechanism in the following three aspects: (a) the concept of OMR; (b) the payment of rates and air-conditioning charge; and (c) the correlation between the level of market stall rentals and the prices of goods sold in markets. To allow sufficient time for deliberating the rental adjustment mechanism, the Administration decided to continue to freeze the public market stall rentals until 30 June 2017.

### The proposed market rental adjustment arrangement in 2017

12. Under the market rental adjustment arrangement proposed by the Administration in 2017, the rental of public market stalls would be adjusted annually upon renewal of tenancy agreement or on the due date for rental adjustment as to be specified in the tenancy agreement in line with the average of the year-on-year rates of change in CPI(A) in the 12-month period. While expressing objection to the above market rental adjustment arrangements, Members maintained their view that the Administration should improve the operating environment of public markets before adjusting the rentals. At its meeting on 14 March 2017, the Panel passed three motions urging the Administration to, inter alia, shelve the plan of effecting rental increase after 1 July 2017 and maintain the rental freeze for public markets so as to alleviate the difficulties faced by stall tenants.<sup>3</sup>

13. According to the Administration's response to the motions passed at the said Panel meeting, the operating deficit of public markets had been progressively rising from \$168 million in 2011-2012 to \$294 million in 2015-2016, and was expected to further rise to \$414 million in 2016-2017<sup>4</sup>. In the Administration's view, tenants in the public markets were essentially commercial operations and as a matter of principle, the situation of subsidizing the commercial operations in public markets that were not subject to any means-testing should be addressed. Pending a comprehensive review of the market rental adjustment mechanism and other related charges, the rental adjustment arrangement only aimed to catch up with inflation. The Administration held the view that the financial impact on the tenants would be mild, with an increase in monthly rentals of about \$69 on average for a non-cooked food stall and about \$168 for a cooked food stall for the first year of the renewed tenancy. Besides, the continuation of low rentals for many of the market stalls was one of the reasons contributing to the sub-optimal use of such stores which in turn dampened the vibrancy of public markets. Having regard to all relevant factors, the Administration considered it reasonable to proceed with the market rental adjustment arrangement with effect from 1 July 2017.

### Correlation between rental levels and price levels

14. The Panel was advised at its meeting in June 2017 that in order to find out, in particular, whether there was any relationship between the prices of fresh food items and market stall rentals, FEHD had commissioned a consultant in the latter half of 2016 to carry out a survey on the prices of fresh food items sold in

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<sup>3</sup> For the wordings of the three motions passed by the Panel and the Administration's response, please refer to CB(2)998/16-17(01) and CB(2)1085/16-17(01) respectively.

<sup>4</sup> For the Administration's response to the motions passed at the meeting on 14 March 2017, please refer to CB(2)1085/16-17(01).

four major fresh food retail channels, namely public markets managed by FEHD, Link Real Estate Investment Trust markets ("Link REIT markets"), supermarkets and other fresh food retail outlets in the neighbourhood. Despite the low rentals paid by the tenants of public markets, no significant price difference had been observed in the public markets when compared to Link REIT markets, supermarkets and neighbourhood fresh food retail outlets. The Administration pointed out that tenants of public markets were free to determine and adjust the prices of their goods having regard to market forces and their operating costs and the Government did not have control over the prices of the goods sold in public markets.

15. Notwithstanding the above findings, some Members considered that the Administration should conduct a follow-up survey, the scope and coverage of which should be expanded to include areas/housing estates where public markets were not provided and fresh food markets were being monopolized by Link REIT or private enterprises.

#### Payment of rates

16. Noting that FEHD currently paid rates on behalf of stall tenants, some Members urged the Administration to continue this practice so as to support small business operations in public markets. The Administration pointed out that the old tenancy agreements had stipulated that tenants were responsible for payment of rentals as well as all the rates, taxes, other charges, etc., in respect of the stalls. FEHD had, however, paid rates on behalf of the stall tenants all along and had not recovered the rates from them. The Director of Audit had recommended that the Administration should explore recovering the rates payable by the tenants. This requirement was in line with the "user-pays" principle adopted by the Administration in other public properties. The Administration would discuss with RVD rates assessment of public market stalls, with a view to identifying a way forward that would balance the interests of the tenants and safeguarding the prudent use of public money.

#### **Latest development**

17. The Office of The Ombudsman published a direct investigation report in August 2018 on "FEHD's Rental Management of Market Stalls".<sup>5</sup> In this report, The Ombudsman has identified five inadequacies in FEHD's rental management of market stalls, including: (a) low level of and great disparity among stall rentals resulting in unlevel playing field for tenants; (b) automatic tenancy renewal reducing chances for others to rent stalls; (c) succession still

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<sup>5</sup> The Office of The Ombudsman also published another direct investigation report on "FEHD's Regulation of Market Stalls" in August 2018.

allowed for most stalls, thus affecting other people's right to bid for the operation of those stalls; (d) no limit on the number of stalls to be rented by a single person giving rise to abuses and reducing consumers' points of purchase; and (e) "frozen stalls" left idle for years, resulting in serious wastage of public resources. In the light of the inadequacies identified, The Ombudsman has urged FEHD to take on board the recommendations set out in the report (see **Appendix I**).

18. According to the paper provided by the Administration for the meeting of the Subcommittee on Issues Relating to Public Markets formed in the sixth LegCo ("the Subcommittee") on 6 November 2018, open auction should be adopted to admit stall tenants on commercial terms with the Government as the landlord. 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. 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).

19. The Subcommittee will discuss with the Administration the rental adjustment mechanism for public market stalls at its meeting on 21 January 2019.

### **Relevant papers**

20. A list of the relevant papers on the Legislative Council website is in **Appendix II**.

**Extract from the Executive Summary of the  
Direct Investigation Report published by The Office of The Ombudsman  
on "Food and Environmental Hygiene Department's Rental Management  
of Market Stalls" in August 2018**

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**Recommendations**

25. In the light of the above, The Ombudsman urges FEHD:

- (1) to review the practice of setting upset prices below the OMR level at auctions;
- (2) to devise a comprehensive and effective rental adjustment mechanism;
- (3) 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;
- (4) to set up a database to keep records of tenancy succession applications and review the processing of such applications;
- (5) 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
- (6) to include the same clause in all versions of tenancy agreements to spell out the Government's power and responsibility for carrying out works in public markets, and set out the requirements and rules for tenants.

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**Relevant papers on  
Issues relating to public market stall rentals**

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene ("FSEH Panel")	14.7.2009 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	14.12.2010 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	22.2.2011 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	8.1.2013 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	9.7.2013 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Subcommittee on Issues Relating to Public Markets formed under FSEH Panel in the Fifth Legislative Council ("the former Subcommittee)	29.6.2015 (Item II)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	8.7.2015 (Item I)	<a href="#">Public Accounts Committee Report No. 64 – Chapter 3 of Part 4 on "Public cooked food markets managed by the Food and Environmental Hygiene Department"</a>
FSEH Panel	---	<a href="#">Report of the former Subcommittee</a>
	14.3.2017 (Item VI)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	13.6.2017 (Item VI)	<a href="#">Agenda</a> <a href="#">Minutes</a>



Subcommittee on Issues Relating to Public Markets formed under FSEH Panel in the Sixth Legislative Council	6.11.2018 (Item III)	<a href="#">Agenda</a>
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