

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 (Commission) since the last report in April 2019 and provides an outlook for 2020-21.

**OVERVIEW**

2. The past year was an important and encouraging year for the Commission with significant progress made across different aspects of its work. The following are especially worth noting:

- (a) The Competition Tribunal (Tribunal) handed down its judgments in Hong Kong's first two competition cases, marking a key milestone for the city's competition law regime. The rulings, which are largely in favour of the Commission, have set significant early precedents that provide guidance for the Commission's work as well as for the business and legal communities.
- (b) Three cartel cases were brought before the Tribunal, one of which was the Commission's first enforcement action stemming from a successful leniency application involving the information technology (IT) sector. The same investigation also resulted in the first infringement notice issued by the Commission as a remedy. The most recent case, which is related to a textbook cartel, involved conducts that began before the Competition Ordinance (Ordinance) was fully implemented and drives home a deterrent message that the Commission will take action against

any anti-competitive conduct that began or continued after the Ordinance came into full effect.

- (c) A decision on a proposed pharmaceutical sales survey was published, providing further clarity on the Commission's approach towards exchanges of competitively sensitive information among competitors and practical guidance on its interpretation of the economic efficiency exclusion<sup>1</sup> under the Ordinance.
- (d) Competition-related policy advice continued to play an increasingly important role in the formulation and execution of public policies and schemes. The Commission provided advice on approximately 30 public policies and initiatives including a submission to the Legislative Council on the Government's proposed Franchised Taxi Scheme.
- (e) A regional summit was held in August 2019 gathering competition law enforcers and academics in the Asia-Pacific region to share experience and explore ideas and opportunities for collaboration.

## **ENFORCEMENT**

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

- (a) received and processed nearly 4,300 complaints and enquiries. Among them, over 210 complaints were assessed further, of which 20% have proceeded to in-depth investigation stage;

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<sup>1</sup> 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.

- (b) received intelligence from other law enforcement agencies, public bodies, informants and leniency applicants which facilitate the Commission's enforcement actions; and
- (c) referred 137 cases in relation to the telecommunications/broadcasting sector to the Communications Authority, 32 cases to other law enforcement agencies and the Competition Policy Advisory Group.

4. About 60% of the complaints and enquiries received by the Commission relate to the First Conduct Rule<sup>2</sup>, with alleged cartel conduct comprising the bulk. The proportion of related cases being pursued by the Commission is consistent with its enforcement priority.

5. In May 2019, the Commission gladly welcomed the judgments handed down by the Tribunal in Hong Kong's first two competition cases involving bid-rigging, market-sharing and price-fixing. As noted above, the outcomes were largely in favour of the Commission, with 14 of the 15 named respondents in the two cases found to have contravened the Ordinance<sup>3</sup>. The cases set a number of significant early precedents, including the standard of proof applicable to the Commission's pecuniary penalty cases, interpretation of the economic efficiencies exclusion, and respondeat superior liability, among others. In January 2020, the Tribunal held its first pecuniary penalty quantum hearing, which upon ruling will set the precedent for how such penalties will be calculated by the Tribunal.

6. In July 2019, the Commission commenced proceedings in the Tribunal against six renovation companies and three individuals for alleged market-sharing and price-fixing in the provision of renovation services in a public housing estate.

7. In January 2020, the Commission commenced proceedings in the Tribunal against an IT company and its director for exchanging competitively

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<sup>2</sup> 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.

<sup>3</sup> Both cases are under appeal by certain Respondents at the time of writing.

sensitive information with a co-bidder regarding their intended quotations in a bidding exercise for the procurement of IT services. An infringement notice was issued to another company that participated in the same cartel. These were the Commission's first proceedings resulting from a successful leniency application and also its first time to make use of an infringement notice as a remedy.

8. In March 2020, the Commission commenced proceedings in the Tribunal against three companies and one individual for alleged price-fixing, market-sharing and/or bid-rigging in relation to the sale of textbooks to students attending primary and secondary schools in Hong Kong.

9. In the same month, the Commission commenced a consultation on commitments offered by three major online travel agents. The proposed commitments aim to address the Commission's concerns over certain clauses in their agreements with accommodation providers in Hong Kong that may harm competition. The Commission will consider the representations received before making a decision on whether to accept the proposed commitments.

10. Based on its experience accumulated since the Ordinance came into full effect, the Commission published a revised leniency programme in April 2020 with a view to strengthening its efficacy and comprehensiveness, and providing stronger and clearer incentives for a cartel member to stop the cartel conduct and report it to the Commission, which will improve detection, strengthen enforcement, and create follow-on recovery rights for victims of the cartels.

11. The Commission issued a statement in March 2020 to address possible questions and concerns from businesses and consumers about the work of the Commission or the application of the Ordinance during the COVID-19 outbreak. It stated that the Commission intended to take a pragmatic approach in its enforcement and advisory functions in respect of temporary measures which are genuinely necessitated by the COVID-19 outbreak and in the interests of Hong Kong consumers and society.

## **APPLICATION FOR A DECISION**

12. The Commission published a Decision in October 2019, finding that a proposed pharmaceutical sales survey is not excluded from the First Conduct Rule by the Ordinance’s “economic efficiency exclusion”. The Decision was made in response to an application from the Hong Kong Association of the Pharmaceutical Industry concerning its proposal to conduct a quarterly survey to collect data on the sales of prescription and over-the-counter pharmaceutical products in Hong Kong and Macau. The data would then be compiled into a sales survey report available for purchase. The Commission carefully considered the application and the submissions received in the public consultation before reaching the Decision.

## **POLICY ADVISORY AND PUBLIC SECTOR ENGAGEMENT**

13. The Commission continued to liaise closely with Government departments and public bodies, and provided advice on approximately 30 public policies and initiatives which concern Hong Kong’s consumers and the business environment.

14. In addition to submitting its views to the Bills Committee of the Legislative Council on the Government’s proposed Franchised Taxi Scheme, the Commission also provided advice on other policy matters including the outlying island ferry services, the use of the Commission’s Non-collusion Clauses and Certificate as well as the designated driving schools in Hong Kong. In general the Commission’s advice has been positively received by the Government and public bodies.

15. During the year, the Commission has also looked into forward-looking policy topics, including potential competition issues that may arise from digital economy. In January 2020, the Commission had a constructive dialogue with the Consumer Council and the Office of the Privacy Commissioner for Personal Data to exchange knowledge and views relating to the interplay between competition law, consumer protection and data privacy in digital markets. The three bodies will follow up and explore possible collaborations on this cross-regulatory regime issue.

## **ADVOCACY AND EDUCATION**

16. The Commission continued its momentum to increase public awareness of the Ordinance and to encourage compliance through outreach and engagement events. In 2019, the Commission held over 70 engagement briefings, conferences, school talks, 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 in an effort to promote the Ordinance and the spirit behind it among startups and SMEs.

17. In August 2019, the Commission launched a multi-pronged advocacy campaign to encourage the community to report suspected anti-competitive practices to the Commission and address common concerns that businesses and the public may have in coming forward to file a complaint.

18. Engagement with the younger generation continued to be a focus of the Commission's advocacy work. During the year, the Commission furthered its youth outreach by rolling out a new round of interactive workshops on the Ordinance to secondary schools in Hong Kong.

19. The Commission and Lingnan University co-organised an inaugural Competition Enforcers and Academics Summit in August 2019. Forty-five distinguished scholars and enforcers from 13 jurisdictions in the Asia Pacific region gathered in Hong Kong to discuss ways and areas in which academic institutions and competition law enforcement agencies can mutually benefit from effectively leveraging each other's knowledge, expertise and resources.

## **OUTLOOK**

20. 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.

21. The Commission's portfolio of investigations has been growing in number, variety and complexity across a wide range of sectors encompassing both the First and Second Conduct Rules. Following the Commission's first infringement notice issued early this year and the recent proposal to use

commitments as a remedy, it is expected that a number of other promising investigations will result in various enforcement outcomes in the coming year, in addition to bringing cases to the Tribunal. Some of these investigations will set important precedents for competition enforcement in Hong Kong and result in greater guidance to the business community regarding certain types of conduct and agreements.

22. To cope with the growing number and complexity of enforcement and legal actions, the Commission will continue to strengthen its professional arm and raise the level of competition law expertise by ongoing capacity and expertise building, as well as developing its in-house forensic IT capabilities.

23. The Commission will continue to play an active role in assisting the public sector and policy makers to assess the competition risks and impacts of public policies and initiatives. To encourage the integration of competition principles into policies/regulations, the Commission is conducting a research project involving academics from Hong Kong, Australia and the Mainland to compare different approaches to the competition impact assessment of policies and their effectiveness, with the aim of producing recommendations and practical guidelines for the public sector in Hong Kong.

24. The Commission will also keep up its momentum in advocacy and engagement with a particular focus on “intermediary” groups such as auditors, lawyers, compliance officers, company secretaries and accountants, as these professions are in the best position to advise businesses and companies on risk management and compliance matters. To expand its engagement, the Commission also intends to strengthen the use of social media in the coming year.

## **ADVICE SOUGHT**

25. Members are invited to note the report above.

**Competition Commission**  
**April 2020**