

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 2020 and provides an outlook for 2021-22.

**Overview**

2. Despite the challenges posed by the COVID-19 pandemic, the Commission has progressed well over the past year with a number of milestones achieved across its various facets of work. The following are especially worth noting :

- (a) Hong Kong's first case of abuse of substantial market power in contravention of the Second Conduct Rule<sup>1</sup> was filed in the Competition Tribunal (Tribunal) in December 2020, a testimony to the Commission's commitment to enforcing the full spectrum of the Competition Ordinance (Ordinance) and providing greater guidance to the business and legal communities.
- (b) The Commission has so far brought seven cases to the Tribunal and was successful in all five cases already ruled by the Tribunal, except as against one respondent in one of these cases. The other two cases are yet to be heard. During the year, the Tribunal handed down judgments on sanctions in four of these cases.

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<sup>1</sup> Under the Second Conduct Rule, an undertaking that has a substantial degree of market power in a market must not abuse that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong.

- (c) Apart from bringing cases before the Tribunal, the Commission made use of commitments and infringement notices in several cases to address competition concerns promptly and proportionately.
- (d) To safeguard market competition and consumer welfare during the pandemic, the Commission published guidance to participants of the Government's anti-epidemic subsidy programmes and provided advice to public bodies which were tasked to administer these programmes.
- (e) An online training programme was conducted in October 2020 to strengthen the capability of local lawyers with limited or no competition law experience to advise their clients, in particular small and medium enterprises (SMEs), on matters related to the competition law.

## **Enforcement**

### *Investigations and Complaints*

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

- (a) received and processed around 5 000 complaints and enquiries. Among them, over 220 complaints were assessed further, of which 19% have proceeded to in-depth investigation stage;
- (b) received intelligence from other law enforcement agencies, public bodies, informants and leniency applicants which facilitate the Commission's enforcement actions; and
- (c) referred 146 cases in relation to the telecommunications/broadcasting sector to the Communications Authority, 45 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 nature of the alleged conduct being pursued by the Commission is consistent with the enforcement priorities as set out in its Enforcement Policy.

### *Tribunal Judgments*

5. The Commission has so far brought seven cases to the Tribunal and was successful in all five cases already ruled by the Tribunal, except as against one respondent in one of these cases. The Court of Appeal has also recently dismissed a substantive appeal from one respondent in the first market sharing and price fixing case filed by the Commission. Judgments on sanctions have been handed down by the Tribunal in four of these cases with the fifth judgment pending. All of these cases contribute to setting early important precedents on the determination of sanctions under Hong Kong's competition regime. The two cases filed in 2020 are awaiting hearing.

6. In April 2020, the Commission welcomed the first judgment on pecuniary penalties handed down by the Tribunal against ten decoration contractors in a market sharing and price fixing case regarding the provision of renovation services for a new public housing estate. Seven of the contractors were ordered to pay the maximum pecuniary penalty<sup>3</sup> allowable under the Ordinance and all ten contractors were made to pay the Commission's costs of the proceedings.

7. In two other similar cases in relation to the provision of renovation services for new public housing estates, the Tribunal also held that all 14 respondents, including both companies and individuals, contravened or were involved in the contravention of the Ordinance.<sup>4</sup> Judgment on sanctions in one of these cases was handed down in January 2021, involving the first fine on an individual and the first director disqualification order issued under Hong Kong's competition regime.

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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> The maximum pecuniary penalty of a contravention of the Ordinance is up to 10% of the undertaking's annual Hong Kong turnover per contravention for a maximum period of three years.

<sup>4</sup> Judgment having been entered against these respondents following their admission of liability.

8. In November 2020, the Tribunal ruled that an information technology (IT) company and its director contravened or was involved in the contravention of the Ordinance by exchanging future pricing information in a bidding exercise organised by the Ocean Park, which amounted to price fixing. The Tribunal ordered the IT company to pay a pecuniary penalty and that the company and the individual pay the Commission's costs of the proceedings on a joint and several basis.

9. In December 2020, the Tribunal handed down a judgment ordering the four IT companies convicted in the first bid rigging case filed by the Commission to pay pecuniary penalties as well as the Commission's cost of the proceedings.

#### *Other Cases before the Tribunal*

10. In December 2020, the Commission filed Hong Kong's first case of abuse of substantial market power in the Tribunal. It is the Commission's case that a medical gas supplier used its near-monopoly position in the supply of medical gases and engaged in a series of exclusionary acts against the only other potential service provider in the downstream medical gas pipeline system maintenance market, in contravention of the Second Conduct Rule. The Commission is also pursuing an individual in this case for his active involvement in the contravention.

11. The cartel case filed in March 2020 regarding the sale of textbooks to students attending primary and secondary schools in Hong Kong is currently at the interlocutory stage.

#### *Commitments and Infringement Notices*

12. Apart from bringing cases to court, the Commission has made use of non-litigation remedies provided under the Ordinance, including issuing infringement notices as well as accepting commitments where appropriate, to address and rectify competition concerns promptly and proportionately.

13. In May 2020, the Commission accepted commitments offered by three major online travel agents which resulted in a complete abandonment of any wide parity clauses in their contracts with accommodation providers in Hong Kong that may harm competition. This is the first time the Commission has accepted commitments under section 60 of the Ordinance, following a public

consultation on the proposed commitments in late March/April 2020.

14. In October 2020, the Commission concluded its investigation into the Hong Kong Seaport Alliance<sup>5</sup> by accepting a set of commitments from the parties to the Alliance which addressed the Commission's competition concerns. The acceptance followed a public consultation in August 2020.

15. In February 2021, the Commission issued infringement notices to six hotel groups and a tour counter operator for facilitating a cartel between two competing travel service providers to fix the prices of tourist attractions and transportation tickets sold at some hotels in Hong Kong. This is the first time the Commission pursues facilitators of cartel conduct, sending a clear signal that those who facilitate the reaching or implementation of cartel arrangements among competitors will also be held liable under the Ordinance.

#### *Policies and others*

16. In June 2020, the Commission published a policy on recommended pecuniary penalties for anticompetitive conduct, providing transparency on the methodology it uses when making fine recommendations to the Tribunal against businesses that have contravened, or have been involved in the contravention of the First Conduct Rule or the Second Conduct Rule of the Ordinance.

17. In strengthening the Commission's overall capability and effectiveness in handling competition issues, the Commission signed a Memorandum of Understanding with the Securities and Futures Commission and the Philippine Competition Commission in April and December 2020 respectively, to enhance cooperation and sharing of information.

#### **Policy Advisory and Public Sector Engagement**

18. The Commission continued to liaise closely with Government departments and public bodies with the aim of fostering a culture of factoring in competition considerations among policy makers and sectoral regulators. As a result of the Commission's efforts, there has been a continuous increase in the awareness and capability of the public sector in integrating competition

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<sup>5</sup> The Hong Kong Seaport Alliance is a contractual joint venture between Hong Kong's four major terminal operators (out of five) to jointly operate and manage their 23 berths across eight terminals at Kwai Tsing port.

principles into policy making.

19. During the year, the Commission provided advice on over 30 public policies and initiatives, of which many involved complex policy design and implementation. These included promotion of electric vehicles, waste paper recycling, procurement of smart water dispensers, the Decoration Contractor System of the Housing Authority and tenancy control on sub-divided housing units.

20. In response to the pandemic, the Commission issued two statements in May and August 2020 to remind participants in the Government's anti-epidemic subsidy programmes of the importance of complying with the Ordinance and being vigilant against potential anticompetitive practices that may undermine procurement processes. The Commission also worked closely with public bodies which are tasked to administer these programmes to take competition concerns into consideration and provided advice on collusion prevention.

21. To foster experience sharing among different jurisdictions on the response to COVID-19, the Commission hosted two webinars during the year, bringing together enforcers and academics around the globe to discuss a range of enforcement and policy issues arising from the pandemic.

### **Advocacy and Education**

22. The Commission continued its momentum to increase public awareness of the Ordinance and to encourage compliance through outreach and engagement events. During the year, the Commission held around 60 engagement briefings, school talks, workshops and media events in either physical or online formats. These events target both the general public and businesses, in particular SMEs.

23. To facilitate the development of competition law expertise amongst the local legal fraternity, the Commission conducted a webinar series in October 2020 for lawyers with limited or no competition law experience so that they would be better equipped to advise their clients, in particular SME clients, on competition law matters.

24. In November 2020, the Commission launched a multi-pronged advocacy campaign to enhance public awareness and understanding of price fixing and its harm. The campaign featured TV announcement and infotainment

ads supported by outdoor and online promotions, a brochure and thematic webinars for businesses from different sectors.

25. Engagement with the younger generation remains an important part of the Commission's advocacy work. To further its youth outreach, the Commission rolled out the second edition of the "Post to Compete" social media contest in November 2020, inviting local tertiary students to compete by designing and executing plans to promote competition law on social media platforms.

26. To enhance appreciation of the core values behind competition law, a video series hosted by a HKU Business School professor was launched in March 2021 to explain the key concepts of market competition in a light-hearted and easy-to-understand manner. An online game and quiz targeting upper secondary students were rolled out in tandem to familiarise the youths with competition concepts.

27. The Commission strengthened the use of social media during the year with around 180 feeds about competition law and the Commission's work posted on its Facebook Page, Instagram and LinkedIn accounts.

## **Outlook**

28. Enforcement of the Ordinance will remain a key focus of the Commission with priority given to investigations and enforcement actions that would result in the greatest overall benefit to the livelihood of the people in Hong Kong.

29. The Commission aims to further enhance enforcement effectiveness and efficiencies by strengthening deterrence and encouraging cooperation. In addition to companies, the Commission will continue to pursue the liability of individuals and parent companies where appropriate.

30. The Commission will remain actively engaged with the public sector and policy makers to integrate competition principles into the policy-making process and to avoid market restrictions which may arise from public policies. To this end, the Commission has been working on providing appropriate training and user-friendly materials to aid policy-makers in conducting competition impact assessment particularly on new policies and schemes.

31. To promote understanding of and compliance with competition laws among businesses operating in the Greater Bay Area, the Commission is working with the Guangdong Administration for Market Regulation to jointly publish a brochure on the key principles of the respective competition laws in the Mainland, Hong Kong and Macau.

32. The Commission will continue its drive to actively engage the public and businesses through continuous outreach and educational initiatives across multiple platforms. One major upcoming initiative is the production of a docudrama series showcasing competition cases handled by the Commission during its first few years.

33. Despite constraints limiting physical events during the pandemic, the Commission will continue to engage its stakeholders through webinars and online events, as well as to further strengthen the use of social media in reaching a wider audience.

### **Advice Sought**

34. Members are invited to note the report above.

**Competition Commission**  
**June 2021**