

For information  
26 June 2023

**LEGISLATIVE COUNCIL  
PANEL ON ECONOMIC DEVELOPMENT**

**Report on the Work of the Competition Commission**

**Purpose**

This paper presents an overview of the work of the Competition Commission (the Commission) since the last report in June 2022 and provides an outlook for 2023-24.

**Overview**

2. As the local epidemic situation continues to subside, the past year has been fruitful for the Commission with milestones achieved across different aspects of its work. The key achievements included:

- (a) brought three cases before the Competition Tribunal (the Tribunal) against a total of seven undertakings and four individuals, including Hong Kong's first case on resale price maintenance (RPM)<sup>1</sup>, the first cartel case relating to a government subsidy scheme, and the second set of proceedings concerning serious anti-competitive conduct<sup>2</sup> in relation to the supply of air-conditioning works;

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<sup>1</sup> RPM occurs when a supplier establishes a fixed or minimum resale price to be observed by its distributors, including retailers, when they resell the product. RPM prevents distributors or retailers from competing with each other by offering lower prices, which will harm competition.

<sup>2</sup> Serious anti-competitive conduct includes the following— (a) fixing, maintaining, increasing or controlling the price for the supply of goods or services; (b) allocating sales, territories, customers or markets for the production or supply of goods or services; (c) fixing, maintaining, controlling, preventing, limiting or eliminating the production or supply of goods or services; and (d) bid-rigging.

- (b) entered into cooperation agreements<sup>3</sup> with several respondents in cases relating to the supply of air-conditioning works whereby they agreed to admit liability and accepted cooperation terms;
- (c) participated in an inter-departmental anti-crime joint operation at the Aberdeen Wholesale Fish Market (Fish Market) coordinated by the Hong Kong Police Force, and initiated an investigation into suspected anti-competitive conduct at the Fish Market;
- (d) accepted commitments<sup>4</sup> offered by seven car distributors, resulting in the complete removal of car warranty restrictions previously imposed on car owners of 17 passenger car brands;
- (e) commenced a consultation on the proposed commitments offered by two leading online food delivery platforms in Hong Kong, which aimed to address the Commission's concerns that the relevant platforms may harm competition;
- (f) published advisory and policy documents to facilitate compliance with the Competition Ordinance (the Ordinance) by various sectors, including:
  - an Advisory Bulletin on employers' joint negotiations with employee bodies on employment matters;
  - a revised *Leniency Policy for Individuals Involved in Cartel Conduct (Leniency Policy for Individuals)* to offer clearer guidance and enhanced incentives for individuals to cease their involvement in cartel conduct and report to the Commission; and

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<sup>3</sup> An undertaking may seek to cooperate with the Commission with a view to reaching a settled outcome to an investigation by way of orders made by consent as provided by Rule 39 of the Competition Tribunal Rules (Cap. 619D) in accordance with the Commission's Cooperation and Settlement Policy if: (a) it is engaged in cartel conduct; and (b) leniency in relation to the cartel conduct is not available.

<sup>4</sup> Section 60 of the Ordinance provides that the Commission may accept a commitment from a person to take any action, or refrain from taking any action, that the Commission considers appropriate to address its concerns about a possible contravention of a competition rule. The Commission may agree not to commence or terminate an investigation in relation to matters addressed by the commitment; as well as not to bring proceedings in the Tribunal or terminate them.

- a revised set of model *Non-collusion Clauses*<sup>5</sup> to strengthen protection for procurers against attempts to undermine competition during procurement exercises; and
- (g) launched Hong Kong’s first docudrama on competition law cases, *COMPETE: Cartel Hunters*. Riding on the docudrama, a city-wide publicity campaign to reach wide audience across the city and an educational programme for secondary schools to introduce the Ordinance to their senior secondary students were rolled out.

Relevant key achievements are set out in **Annex**.

3. The Commission’s enforcement, policy and advocacy efforts in the past year are detailed in the ensuing paragraphs.

### **Key Enforcement Statistics**

4. Key enforcement statistics relating to the work of the Commission are summarised below –

	Since December 2015 <sup>6</sup>	Since June 2022 <sup>7</sup>
Initial assessment commenced	251	10
<i>From Complaints</i>	186	6
<i>From Referrals / Other Cases Initiated by the Commission</i>	65	4
Investigation commenced	54	5
Enforcement outcomes	19	4
<i>Proceedings at the Tribunal</i>	14	3

<sup>5</sup> The Commission published the first set of model *Non-collusion Clauses* in 2017 for procurers to adapt and incorporate in their invitation to bid documents and contracts to reduce procurers’ exposure to risks of anti-competitive conduct during procurement exercises. The *Non-collusion Clauses* serve to warn bidders of the prohibition against, and consequences of, entering into anti-competitive arrangements.

<sup>6</sup> The Ordinance was fully commenced on 14 December 2015.

<sup>7</sup> Since the last report in June 2022.

	Since December 2015 <sup>6</sup>	Since June 2022 <sup>7</sup>
<i>Non-litigation Remedies</i>	5	1

## Investigations

5. A key function of the Commission is to investigate conduct that may contravene the competition rules. According to the Ordinance, regardless of whether cases are originated from complaints received, referrals by the Government or public bodies, or initiated by the Commission itself (e.g. suspicious cases identified from public enquiries or on the Commission’s own initiative), the Commission should have reasonable cause to suspect (RCS) contravention of any Conduct Rule under the Ordinance, before it could commence investigation in accordance with the Ordinance.

6. The Commission receives and reviews hundreds of complaints each year<sup>8</sup>. However, under the Ordinance, the Commission is not required to investigate complaints that are found to be misconceived, lacking in substance or trivial, etc<sup>9</sup>.

7. The Commission conducts initial assessment of other complaints, as well as cases of its own volition and by referrals, to ascertain whether the required RCS exists that would allow investigation to begin. The Commission has commenced initial assessment of ten new cases since June 2022.

8. Under the Ordinance, the Communications Authority (CA) has jurisdiction over anti-competitive conduct concerning the telecommunications and broadcasting sectors. Since June 2022, the Commission has referred four cases in relation to the telecommunications and broadcasting sector to the CA<sup>10</sup> for follow up.

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<sup>8</sup> From June 2022 to May 2023, the Commission received 275 complaints (2 504 since December 2015), with cartels and exclusive dealings under the First Conduct Rule and exclusive dealings and anti-competitive tying and bundling under the Second Conduct Rule being the complainants’ major concerns.

<sup>9</sup> Section 37 of the Ordinance provides that the Commission is not required to investigate a complaint if it does not consider it reasonable to do so and may, in particular, refuse to investigate a complaint if it is satisfied that the complaint is trivial, frivolous or vexatious; or the complaint is misconceived or lacking in substance.

<sup>10</sup> Since December 2015, the Commission has referred a total of 158 cases in relation to the telecommunications and broadcasting sector to the CA.

9. Once the Commission is satisfied that the required RCS exists based on findings during initial assessment, it may commence an investigation and make use of its investigation powers under the Ordinance<sup>11</sup> to gather documents and information from relevant parties.

10. Since June 2022, the Commission has commenced investigation into five new cases. As of May 2023, cases under the Commission's investigation covered suspected anti-competitive conduct across a variety of sectors, including real estate and property management, fuel and energy resources, and food and groceries, etc.

11. In recent years, the Commission stepped up collaborations with other law enforcement agencies. In this connection, in November 2022, the Commission participated in an inter-departmental anti-crime joint operation at the Fish Market coordinated by the Hong Kong Police Force, during which the Commission surveyed practitioners from over 30 wholesalers on allegations concerning possible anti-competitive conduct in the Fish Market. Subsequently, the Commission escalated the case to the investigation phase, and conducted search in a number of premises at the Fish Market for suspected anti-competitive conduct including price fixing, output limitation<sup>12</sup> and group boycott<sup>13</sup> amongst the wholesalers in December 2022.

## **Enforcement Outcomes**

12. Following investigation, where the Commission has reasonable cause to believe that contravention of the Ordinance has taken place, it may commence proceedings in the Tribunal for pecuniary penalties or disqualification orders, or adopt suitable non-litigation remedies, depending on the nature and facts of each case.

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<sup>11</sup> Examples of investigation powers include requiring persons to produce documents or information, requiring persons to attend before the Commission to answer questions, and entering and searching relevant premises with warrant.

<sup>12</sup> Output limitation occurs when competitors agree to fix, maintain, control, prevent, limit or eliminate the production or supply of particular goods or services. It is considered a serious anti-competitive conduct under the Ordinance.

<sup>13</sup> Group boycott occurs when there is an agreement or concerted practice amongst competitors not to do business with targeted individuals or undertakings.

### *Cases brought before the Tribunal*

13. Since June 2022, the Commission has commenced new proceedings in the Tribunal in three cases, against a total of 11 undertakings and individuals. Details are as follows –

- (a) In September 2022, the Commission brought Hong Kong's first RPM case to the Tribunal against an undertaking for imposing minimum resale prices on its two main local distributors for the sale of its monosodium glutamate powder product.
- (b) In March 2023, the Commission commenced proceedings in the Tribunal against four undertakings and three individuals for suspected price fixing, market sharing, bid-rigging and/or sharing of competitively sensitive information regarding the provision of quotations to enterprises that procured for information and technology (IT) solutions through applying for government subsidy under the Distance Business Programme<sup>14</sup>. This is the first cartel case brought before the Tribunal involving the abuse of a government subsidy scheme.
- (c) In June 2023, the Commission commenced the second set of proceedings in the Tribunal<sup>15</sup> against two undertakings and one individual for suspected price fixing, market sharing and/or bid-rigging when responding to quotations / invitation of tender in relation to the supply of air-conditioning works in Hong Kong.

14. In November 2022, the Commission entered into cooperation agreements with an undertaking and two of its employees (the cooperating respondents) in proceedings regarding suspected cartel conduct in relation to the supply of air-conditioning works<sup>16</sup>. According to the agreements, the respondents agreed to admit liability and accepted cooperation terms, including a proposed pecuniary penalty of HK\$150 million on the respondent company. The terms of cooperation are subject to the Tribunal's determination.

15. Including the above cases, the Commission has so far brought 14 cases before the Tribunal against a total of 66 undertakings and individuals, and was

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<sup>14</sup> The Distance Business Programme is a funding scheme launched by the Innovation and Technology Commission under the Government's Anti-Epidemic Fund to support local enterprises to adopt IT solutions to continue their businesses and services during the COVID-19 epidemic. The Hong Kong Productivity Council is the Secretariat of the Programme.

<sup>15</sup> The Commission filed the first set of proceedings in the Tribunal in June 2022.

<sup>16</sup> Including the first and second sets of proceedings.

successful in all five cases that have completed relevant legal procedures and been fully resolved at the Tribunal so far.

### *Decisions of the Tribunal*

16. In the past year, the Tribunal granted orders on a number of cases filed by the Commission, which included pecuniary penalties and director disqualification orders. Details are as follows:

- (a) In July 2022, the Tribunal granted orders including pecuniary penalties and director disqualification against two undertakings and an individual in a price-fixing case in the travel services sector<sup>17</sup>. The orders made in a hearing were based on the joint applications for disposing of the proceedings by consent filed with the Tribunal by the Commission and the three settling respondents after they offered cooperation under the Commission's *Cooperation and Settlement Policy*. Proceedings against the non-cooperating respondents in this case are ongoing.
- (b) In the same month, the Tribunal handed down a judgment on pecuniary penalties and director disqualification against three undertakings and two individuals concerning a decoration contractor cartel case in King Tai Court in San Po Kong<sup>18</sup>.

### *Non-litigation Remedies*

17. Since December 2015, the Commission has adopted non-litigation remedies in five cases, including accepting commitments in accordance with section 60 of the Ordinance<sup>4</sup> and issuing infringement notices under section 67 of the Ordinance<sup>19</sup> as enforcement outcomes.

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<sup>17</sup> The Commission filed the price-fixing case in the travel services sector with the Tribunal in January 2022. The Commission and the settling respondents filed joint applications with the Tribunal for disposing of the proceedings by consent. The Tribunal granted orders in July 2022. Two undertakings received a 25% and 20% discount from their levels of recommended pecuniary penalty respectively in recognition of their cooperation with the Commission during the investigation process. In addition, the Tribunal ordered that an individual involved in the case be disqualified from acting as a director in any company for a period of three years.

<sup>18</sup> The Commission filed the decoration contractor cartel case with the Tribunal in September 2018. In July 2020, the Tribunal ruled that the five respondents had contravened or had been involved in contravening the First Conduct Rule of the Ordinance by engaging in market sharing and price fixing in relation to the provision of renovation services at the estate.

<sup>19</sup> According to section 67 of the Ordinance, where the Commission has reasonable cause to believe that contravention of the First Conduct Rule has occurred and the contravention involves serious anti-competitive conduct, and the Commission has not yet brought proceedings in the Tribunal in respect of the contravention, the Commission may issue infringement notices.

18. In October 2022, the Commission accepted commitments offered by seven car distributors, resulting in the complete removal of car warranty restrictions previously imposed on car owners of 17 passenger car brands. The commitments were accepted following a consultation conducted in August 2022.

19. In June 2023, the Commission commenced a consultation on the proposed commitments offered by two leading online food delivery platforms in Hong Kong. The commitments, if accepted, would address the Commission's concerns that certain requirements imposed by the two platforms on their partnering restaurants may harm competition. A decision will be made by the Commission after considering the representations received during the consultation.

### *Block Exemption Orders*

20. Under certain circumstances, the Commission may issue a block exemption order (BEO) in respect of a particular category of agreements for excluding the application of the First Conduct Rule under the Ordinance to these agreements.

21. The Commission issued a BEO in August 2017 with regard to the vessel sharing agreements between liner shipping companies, which was due to expire in August 2022. After a review of the BEO and a consultation on the proposed renewal, the Commission decided to renew it for four years. The BEO will remain in place, on the same substantive terms as originally set out in 2017, until 8 August 2026.

### **Enforcement Policies and Advisory Documents**

22. The Commission published various policy documents over the years to address key aspects of its enforcement, and made revisions to some of the documents based on its experience accumulated since the Ordinance came into full effect.

23. In September 2022, the Commission revised the *Leniency Policy for Individuals* to offer clearer guidance and enhanced incentives for individuals to cease their involvement in cartel conduct and report to the Commission, thereby further strengthening the Commission's cartel detection and enforcement efforts.



24. To strengthen protection for procurers against attempts to undermine competition during procurement exercises, the Commission published a revised set of model *Non-collusion Clauses*<sup>20</sup> in January 2023 for procurers to incorporate into their invitations to tender/quotation documents and contracts. The newly added clauses require bidders to identify their beneficial owners, which, in turn, provide procurers with greater clarity as to the competitiveness of the procurement process.

25. In addition, the Commission issues advisory bulletins on specific competition matters from time to time to encourage and assist businesses in complying with the Ordinance. In this connection, in August 2022, the Commission published its fifth advisory bulletin with practical scenario-based examples to provide guidance on how the Ordinance applies to the conduct of employers in the context of their joint negotiations with employee bodies on employment matters.

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

26. Another important statutory function of the Commission is to advise the Government on competition matters. Since June 2022, the Commission has provided advice to various bureaux and departments and public bodies on over 30 public policies. Some of the examples include the Taxi Fleet Management Regime, voluntary Water Efficiency Labelling Scheme, tender exercises for car park operations, employers' joint negotiations with employee bodies on employment matters, and procurement policy related to the treatment of bids of unreasonably low price.

27. The Commission has continued to assist the Government in taking competition into account in the policy-making and implementation process. It has also raised awareness amongst public procurers against bid-rigging, and enhanced frontline staff's capability to detect and report to the Commission potential anti-competitive conduct. In August 2022, the Commission collaborated with the Civil Service Bureau (CSB) to provide competition law training to Senior Executive Officers and other relevant officers who are responsible for preparing tender documents and conducting tender exercises. With the training well received by over 70 officers, CSB proposed conducting it on a regular basis as part of its procurement training programmes.

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<sup>20</sup> The *Non-collusion Clauses* comprise model non-collusion wordings that may be included in an invitation to bid, a model certificate for bidders to sign as part of their submission to declare that the bid was developed independently, and a user's guide on such documents.

28. To further increase the awareness of government departments in preventing and detecting anti-competitive conduct (such as bid-rigging) in public procurement process, the Commission invited all departments to a briefing session in June 2023, at which the Commission would, amongst other things, elaborate on the use of the revised model *Non-collusion Clauses* and discuss the Commission's recent enforcement efforts.

## **Public Advocacy and Education**

29. The Commission continued to increase public awareness of the Ordinance and to promote compliance by various sectors through various types of outreach and engagement events. Since June 2022, the Commission has held a total of around 60 engagement briefings, workshops and media events in either physical or online formats. Whilst some of these events provided a general overview of the Ordinance for members of the public, others were bespoke events for specific targets, such as statutory bodies, professional organisations and particular trades, including property management, tourism, housing, legal, sports, chambers of commerce, charity, etc.

30. In September 2022, the Commission organised the *Academy on Competition Law and Policy: Webinar on Mainland's Anti-monopoly Law* for businesses and the public sector in Hong Kong to learn about the latest developments in the Anti-monopoly Law of the People's Republic of China. The webinar was attended by over 350 lawyers, business representatives, academics, university students and those from the public sector.

31. In the same month, the Commission launched Hong Kong's first docudrama on competition law cases, *COMPETE: Cartel Hunters*. Showcasing the first batch of competition cases handled by the Commission, the five-episode series co-produced with RTHK was first aired on RTHK 31 from September to October 2022. A city-wide publicity campaign via outdoor, radio, online and social media platforms was run in tandem with the airing of the docudrama. As of end of May 2023, the docudrama and its related videos have garnered over 34.6 million views on different online platforms.

32. Engagement with youths continues to be an important part of the Commission's advocacy work. Riding on the aforementioned docudrama, and supported by the *Business-School Partnership Programme 2022/23* of the Education Bureau, an educational programme *Cartel Hunters – Learn more*

*about the Competition Ordinance* was rolled out in February 2023 for secondary schools to introduce the Ordinance to their senior secondary students as part of their life planning education series. Close to 170 schools (with over 15 000 students) have signed up for the programme.

33. The Commission also 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**

34. Enforcement of the Ordinance continues to be a key focus of the Commission, and priority will be given to investigations and enforcement actions that would result in the greatest overall benefit to competition and consumers in Hong Kong. The Commission will continue to focus on three particular areas of anti-competitive conduct affecting livelihood issues, involving cartels that aim to take advantage of government subsidies or public funding, and impacting digital markets.

35. To strengthen collaborations with the Mainland on competition law, the Commission and the Guangdong Administration for Market Regulation are finalising a compliance booklet targeting businesses operating in the Guangdong-Hong Kong-Macao Greater Bay Area. The booklet will highlight the key features of the respective competition law regimes in the Mainland and Hong Kong, as well as provide guidance to companies on how to enhance their internal risk assessment and compliance capabilities.

36. With the removal of social distancing measures and social and economic activities fully resuming normalcy, the Commission is strengthening its in-person exchanges and collaborations with competition agencies from the Mainland and overseas. To this end, the Commission will organise the *2023 Competition Enforcers and Academics Summit* in August. Bringing together scholars and enforcers from the Mainland and the Asia Pacific region (including Singapore, Malaysia, Vietnam, Indonesia, Australia and New Zealand), the event will discuss a number of topical competition issues of mutual interest to the region, including those related to the digital economy, sustainable development and labour.

37. The Commission will make full use of both physical and online events to engage with its stakeholders and members of the public. Promotions on social

media platforms will continue as part of the Commission's outreach to wider audience.

### **Advice Sought**

38. Members are invited to note the report above.

**Competition Commission**  
**June 2023**

# Hong Kong Competition Commission Key Achievements (2022/2023)

