

**立法會**  
***Legislative Council***

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**Panel on Economic Development**  
**Meeting on 7 May 2024**

**Background brief on the work of the Competition Commission**

**Purpose**

This paper provides background information on the work of the Competition Commission (“the Commission”) and summarizes the major views and concerns expressed by members of the Panel on Economic Development (“the Panel”) on relevant issues in previous discussions.

**Background**

The Competition Ordinance and the Competition Commission

2. The Competition Ordinance (Cap. 619) (“the Ordinance”) was enacted by the Legislative Council (“LegCo”) in June 2012, which came into full effect on 14 December 2015. The objective of the Ordinance is to prohibit conduct that prevents, restricts or distorts competition, and to prohibit mergers that substantially lessen competition in Hong Kong. It provides for a cross-sectoral competitive law prohibiting anti-competitive conducts in all sectors.

3. The Commission is an independent statutory body established under the Ordinance with the following statutory functions:

- (a) investigate conduct that may contravene the competition rules of the Ordinance and enforce the provisions of the Ordinance;
- (b) promote public understanding of the value of competition and how the Ordinance promotes competition;
- (c) promote the adoption by undertakings carrying on business in Hong Kong of appropriate internal controls and risk

management systems and to ensure their compliance with the Ordinance;

- (d) advise the Government on competition matters within and outside Hong Kong;
- (e) conduct market studies into matters affecting competition in markets in Hong Kong; and
- (f) promote research into and the development of skills in relation to the legal, economic and policy aspects of competition law in Hong Kong.

4. Under the Ordinance, the Communications Authority (“CA”) is conferred jurisdiction concurrent with the Commission to enforce the Ordinance in respect of the conduct of certain undertakings operating in the telecommunications and broadcasting sectors.

#### The six Guidelines

5. To help businesses comply with the new competition rules, the Commission and CA issued the following Guidelines under the Ordinance on 27 July 2015 (“the six Guidelines”):

- (a) Guideline on the First Conduct Rule (“FCR”)<sup>1</sup>;
- (b) Guideline on the Second Conduct Rule (“SCR”)<sup>2</sup>;
- (c) Guideline on the Merger Rule<sup>3</sup>;
- (d) Guideline on Complaints;

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<sup>1</sup> FCR prohibits businesses from making or giving effect to an agreement, engaging in a concerted practice, or making or giving effect to a decision of an association, if the object or effect is to harm competition in Hong Kong. [Source: [Competition Commission’s website](#) accessed on 15 April 2024]

<sup>2</sup> SCR prohibits businesses with a substantial degree of market power from abusing that power by engaging in conduct that has the object or effect of harming competition in Hong Kong. [Source: [Competition Commission’s website](#) accessed on 15 April 2024]

<sup>3</sup> The Merger Rule prohibits mergers between businesses which substantially lessen competition in Hong Kong. At present, the Merger Rule only applies to mergers involving carrier licence holders within the meaning of the Telecommunications Ordinance (Cap106). [Source: [Competition Commission’s website](#) accessed on 15 April 2024]

- (e) Guideline on Investigations; and
- (f) Guideline on Applications for a Decision under Sections 9 and 24 (Exclusions and Exemptions) and Section 15 Block Exemption Orders.

6. The six Guidelines provide guidance on how the Commission and CA intend to interpret and give effect to the provisions of the Ordinance. The Guidelines, however, are not part of the legislation and they will not bind the Competition Tribunal in interpreting the Ordinance.

### Policy Documents

7. To address key aspects of its enforcement approach, the Commission has adopted the following policy documents:<sup>4</sup>

#### *Enforcement Policy*

8. The Enforcement Policy supplements the Ordinance and the six Guidelines to provide guidance on how the Commission intends to exercise its enforcement function in investigating possible contraventions of FCR and SCR. Details on the Commission's core principles when investigating cases and when prioritizing enforcement can be found in the Enforcement Policy.

#### *The Leniency Policies*

9. According to the Commission, one of the key tools used by competition authorities around the world to deter and detect cartels is to have a policy that provides an immunity from prosecution and/or penalty for the first business to inform the competition authority of their involvement in a cartel. The Leniency Policy for Undertakings Engaged in Cartel Conduct ("Leniency Policy for Undertakings") is designed to provide a strong, transparent, and predictable incentive for an undertaking who is engaged or involved in cartel conduct to stop their conduct and report the conduct to the Commission. The Leniency Policy for Individuals Involved in Cartel Conduct, on the other hand, is directed towards individuals who wish to stop their involvement in cartel conduct and to report the conduct to the Commission.

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<sup>4</sup> [Competition Commission's website](#) (Accessed on 15 April 2024)

### *Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct*

10. The Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct provide a framework within which undertakings which do not benefit from leniency under the Leniency Policy for Undertakings can opt to cooperate with the Commission's investigation.

### *Policy on Recommended Pecuniary Penalties*

11. Pursuant to Section 92 of the Ordinance, the Commission may apply to the Competition Tribunal for a pecuniary penalty to be imposed on any person it has reasonable cause to believe has contravened a competition rule or has been involved in a contravention of a competition rule. The Policy on Recommended Pecuniary Penalties sets out a 4-step approach to the formulation of recommended pecuniary penalties for undertakings and associations of undertakings.

### *Policy on section 60 Commitments*

12. Under section 60 of the Ordinance, 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 Policy on Section 60 Commitments sets out the Commission's practice and procedure in respect of commitments relating to contraventions of the FCR and SCR.

## **Major views and concerns expressed by Panel members**

13. Since the full commencement of the Ordinance in December 2015, the Commission has briefed the Panel regularly on its work in implementing the Ordinance. The major views and concerns expressed by members are summarized in the ensuing paragraphs.

### Work of the Competition Commission

14. At the Panel meeting on 23 June 2023, the Panel was briefed by the Commission on its work since its last report made to the Panel in June 2022 and outlook for 2023-2024. Members commended the Commission's efforts in enforcing the Competition Ordinance (Cap. 619), such as the cartel case brought before the Competition Tribunal and its current more proactive approach in commencing investigations. Members noted that the cases under the Commission's investigation covered suspected anticompetitive

conduct across a variety of sectors, including property management, real estate, fuel and energy resources, and food and groceries.

15. Members enquired about ways to facilitate enforcement and the criteria and considerations for litigation or non-litigation options. They also asked about the number of cases and the latest developments of investigations carried out by the Commission in relation to the Second Conduct Rule since its inception. There was a suggestion that the Commission should conduct initial observations and regular monitoring on emerging industries to address the potential issues of natural monopoly. The Commission responded that depending on the nature and facts of each case, it might initiate proceedings, adopt suitable non-litigation remedies or refer the case to other departments for action where necessary.

16. For effective regulation and prevention of inadvertent breaches of the law by the public and organizations, members suggested that the Commission should draw up a list of conduct setting out contraventions of the competition law and set up a dedicated team to explore with relevant parties various options regarding different tender exercises. The Commission responded that as the enforcement agency of the competition law, it had difficulty in providing specific advice on the suitability of adopting tendering for different projects. However, it would take action against any undertakings suspected of anti-competitive behavior, especially those affecting public livelihood and involving defraud of public funds.

17. Members commended the Commission's publicity and education work. They opined that publicity and education could enhance public awareness of competition law and understanding of related offences, thereby helping the public to avoid becoming victims of anti-competitive behaviour or breaching the law inadvertently. There were suggestions that the Commission should allocate more resources to publicity and education work in secondary schools and share the Commission's experience with government departments to enhance the awareness and ability of those responsible for subsidy schemes and tendering exercises in the Government to identify contraventions of the competition law.

#### Review of the Competition Ordinance

18. Members pointed out that it had been eight years since the Ordinance came into force in 2015, and the amended Anti-Monopoly Law of the Mainland had been in force since 1 August 2022. In light of these developments, members called on the Administration to consider reviewing the Ordinance to strengthen the Commission's powers and enforcement of the Ordinance, in a bid to cope with the ever-changing market and challenging global economic environment.

19. The Commission responded that its enforcement actions focused on three particular areas, one of them being anti-competitive conduct affecting livelihood issues. The Commission considered that the powers conferred by the Ordinance were generally adequate. As regards the amended Anti-Monopoly Law of the Mainland, the Commission advised that it had strengthened liaison with the Mainland to learn from their experience with the amended Anti-Monopoly Law. The Commerce and Economic Development Bureau added that it would continue to keep watch on the development and enforcement of competition laws in the Mainland and overseas.

20. Some Members considered that the investigation power of the Commission seemed to be insufficient under the Ordinance, especially its power in collecting evidence from and commencing proceedings against multi-national corporations. The Commission responded that it was invested with statutory powers, including compulsory investigation powers when it proceeded to the investigation phase, and would adopt various methods and strategies to obtain information in its investigations. The Commission considered that these powers and strategies were largely sufficient and its enforcement procedure was stringent and effective. Nevertheless, the Administration advised that it would pay due regard to the operation of the Ordinance and consider whether there was a need to review the Ordinance, such as the proposal on a cross-sector merger rule.

21. There was a suggestion that the Ordinance should be expanded to deal with the issues of market dominance and cover statutory bodies as well as parties inviting tenders, which might select tenderers based on the “lowest bid wins” principle and such principle might be unfair to small and medium enterprises. The Administration replied that as the role of public bodies was to provide essential public services and they mostly did not engage in economic activities, the competition rules of the Ordinance did not apply to them. In response to an enquiry, the Administration added that while the Ordinance did not apply to the Government, the Administration would respond to any anti-competition concern relating to its work.

### **Latest development**

22. The Commission will brief the Panel on its work at the meeting on 7 May 2024 and provide an outlook for the following year.

**Relevant papers**

23. A list of the relevant papers available is in the **Appendix**.

Council Business Division 4  
Legislative Council Secretariat  
30 April 2024

## Appendix

### Relevant papers on the work of the Competition Commission

Committee	Date of meeting	Paper
Panel on Economic Development	27 April 2020	<a href="#">Agenda</a> Item IV: Report on the work of the Competition Commission <a href="#">Minutes</a> <a href="#">Follow-up paper</a>
	9 July 2021	<a href="#">Agenda</a> Item III: Report on the work of the Competition Commission <a href="#">Minutes</a> <a href="#">Follow-up paper</a>
	4 July 2022	<a href="#">Agenda</a> Item III: Report on the work of the Competition Commission <a href="#">Minutes</a>
	26 June 2023	<a href="#">Agenda</a> Item IV: Report on the work of the Competition Commission <a href="#">Minutes</a>

Council meeting	Paper
20 May 2020	<a href="#">Question 8</a> : Promoting competition in the fuel market
4 May 2022	<a href="#">Question 22</a> : Retail prices of auto-fuels
8 February 2023	<a href="#">Question 13</a> : Combating bid-rigging
21 June 2023	<a href="#">Question 15</a> : Management fees of private housing