

競爭政策諮詢委員會工作報告

COMPAG

Competition Policy Advisory Group Report

2016

(English version)

1. Introduction

Background

The Competition Policy Advisory Group (“COMPAG”) was established in December 1997 to provide a dedicated forum for examining, reviewing and advising on competition-related issues. COMPAG aimed to promote the Government’s policy on enhancing economic efficiency and the free flow of trade through sustainable competition in Hong Kong, thereby bringing benefits to both the business sector and consumers.

2. In May 1998, COMPAG issued the Statement on Competition Policy (“the Statement”), setting out the objective of the Government’s competition policy. To supplement the Statement and advise businesses across sectors on the typical types of anti-competitive conduct and activities, COMPAG further published a set of guidelines in 2003.

3. In 2005, COMPAG appointed the Competition Policy Review Committee (“CPRC”) to review, and make recommendations on the future direction for competition policy in Hong Kong. In its report submitted to COMPAG in June 2006, CPRC recommended that a new cross-sector competition law be introduced.

4. Following the CPRC’s recommendation, the Government launched in November 2006 a public consultation on the introduction of a cross-sector competition law, and in May 2008 a further public consultation on the detailed proposals for a competition law.

5. Backed by wide public support, the Government introduced the Competition Bill (“the Bill”) into the Legislative Council (“LegCo”) in July 2010. The Bill was passed by LegCo in June 2012 to become the Competition Ordinance (“the Ordinance”), which fully commenced on 14 December 2015.

6. Upon full commencement of the Ordinance, competition-related complaints are handled by the Competition Commission (“Commission”) and the Communications Authority as the independent statutory authorities, while COMPAG handles complaints against entities which are not subject to the competition rules and enforcement provisions of the Ordinance.

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7. **Chapter 2** of this report gives an account of the interface between the Commission and COMPAG in handling competition-related complaints. **Chapter 3** outlines the cases received by COMPAG in 2016.

2. Interface between the Competition Commission and COMPAG in complaint-handling

The Ordinance provides a legal framework that prohibits and deters undertakings¹ in all sectors from engaging in conduct which has the object or effect of preventing, restricting or distorting competition in Hong Kong. The Ordinance is enforced by the Commission, and the Communications Authority if the broadcasting and telecommunications sectors are concerned.

2. COMPAG, on the other hand, handles complaints on –
 - (a) anti-competitive conduct against government entities and bodies or persons which are not subject to the competition rules and enforcement provisions of the Ordinance; and
 - (b) non-compliance with conditions and limitations imposed on agreement, conduct and merger exempted by the Ordinance.
3. COMPAG Secretariat has agreed with the Commission on the referral arrangements in case of misdirected complaints. Specifically,
 - (a) if the Commission receives a complaint which falls entirely within COMPAG's ambit, the Commission will refer the case to COMPAG. Nevertheless, to protect confidentiality, the Commission will only provide an outline of the complaint to COMPAG, excluding information that would identify the complainant or his organisation, unless the complainant expressly consents to his identity being disclosed to COMPAG; and
 - (b) if the Commission receives a complaint involving both entities which fall within its ambit and entities under COMPAG's, the Commission will handle the complaint first, and inform COMPAG where appropriate after it has completed action.

¹ An 'undertaking' is defined as any entity, regardless of its legal status or the way in which it is financed, engaged in economic activity and includes a natural person engaged in economic activity.

3. Cases Received by COMPAG

The following cases were referred by the Commission to COMPAG in 2016, with personal data excluded in accordance with the arrangements set out in Chapter 2. Except for the complainant of Case 4, none have provided consent for the Commission to disclose his identity to COMPAG. Based on the information available, relevant Bureaux with policy responsibility over the subject matters of the complaints were asked to look into the case. The outcome and latest position are set out below.

(A) Cases concerning Government Policies and Practices

Case 1: Alleged anti-competitive conduct of the Architectural Services Department in its tendering and sub-contracting arrangement (case closed)

2. The complainant, which was a sole proprietor contractor for floor works of sports venues and sometimes a sub-contractor of government projects, alleged that the Architectural Services Department (“ArchSD”) only awarded its contracts to a list of recognised contractors that were usually sizeable corporations and it was difficult for small businesses to compete with sizeable corporations due to various regulations imposed by ArchSD.

3. COMPAG invited the Development Bureau (“DEVB”) to look into the case. According to DEVB, contractors who are able to meet certain financial, technical and management criteria can apply for admission to the List of Approved Contractors for Public Works (“List”) any time. The qualifications, requirements and other criteria as well as the procedures for a contractor to apply for admission to the List are clearly promulgated in the Contractor Management Handbook of DEVB and are transparent to all potential applicants. They are drawn up to reflect the relevant policy considerations, such as ensuring quality and availability of the relevant expertise.

4. COMPAG cannot see from the complaint in what way the administration of the List or tendering arrangements of ArchSD has been anti-competitive. As the information furnished in the complaint is insufficient to facilitate a meaningful investigation and the complainant cannot be contacted for further information, COMPAG decided that no further investigation be made.

5. As to whether the existing criteria imposed for admission to the List are reasonable and appropriate, it is within the professional judgement and

expertise of DEVB. COMPAG has asked DEVB to consider whether a review would be necessary.

Case 2: Complaint about the mandatory requirement of an international school for all students to go to school by school bus (case closed)

6. The complainant alleged that an international school required all its students to take school buses to school, unless the students live within a predetermined walking radius of the school. The complainant alleged that this requirement might be a result of government regulation or policy. The complainant also claimed that while the school was free to choose any licensed school bus service providers, the number of licensees in the market was limited and the appointed service provider, which almost dominated the market, was the only company with sufficient capacity to provide the service. The complainant alleged that the quality of the school bus service was poor but the fare was very high.

7. COMPAG invited the Education Bureau (“EDB”) to look into the case. According to the information provided by EDB, the mandatory school bus scheme was proposed by the school in the first place to support its proposed redevelopment project, and was accepted by the Town Planning Board as one of the conditions for granting planning permission to the project. Subsequently, the school operator provided an undertaking to EDB in relation to the proposed redevelopment project, including a provision that the school operator shall ensure that a policy will be in place to require its students to commute to and from the school “by school buses or public transportation (excluding taxi)”. Neither EDB nor the Town Planning Board has categorically required that all students of the international school must commute by school buses only. As the complainant cannot be contacted for more information, COMPAG decided that no further action or investigation be made.

8. The complainant’s allegation concerning limited number of licensees for operating school buses in the market is relevant to Case 3 below which is under investigation.

Case 3: Alleged anti-competitive conduct of the Transport Department in relation to the issuance of licences for the provision of Residents’ Services and Student Services by non-franchised bus (under investigation)

9. Two complaints concerning the provision of Residents’ Services and Student Service by non-franchised bus have been referred to COMPAG. In the first complaint, the complainant alleged that partly because of the

refusal of the Transport Department to issue new licences to new entrants to operate Residents' Services, the number of companies eligible to bid for Residents' Services for a particular residential estate had reduced, leading to higher fares. In the second complaint (i.e. Case 2 above), the complainant alleged that as the number of licences for non-franchised bus to operate Student Service was limited, one Student Service provider had dominated the market and the fare charged by that particular provider was high but its service quality was poor.

10. The cases have been referred to the Transport and Housing Bureau ("THB") for investigation. The outcome of the investigation will be considered by COMPAG in due course.

Case 4: Alleged anti-competitive policy of the Government in relation to the approval of student visas (under investigation)

11. The complainant alleged that under the existing policy, a student visa application would be approved only if the applicant was enrolled in a course provided by any of the eight universities in Hong Kong. The complainant was concerned that such a policy would unduly restrict competition for providing education services to international students in Hong Kong.

12. The case has been referred to EDB for investigation. The outcome of the investigation will be considered by COMPAG in due course.

Case 5: Alleged anti-competitive requirement imposed by the Leisure and Cultural Services Department in relation to the procurement of printing service (under investigation)

13. The complainant alleged that one of the tender requirements imposed by the Leisure and Cultural Services Department, which require potential suppliers of printing services to submit their quotations together with a list of 20 priced books with more than 200 pages each printed by them, was arbitrary and had unduly narrowed competition for the tender.

14. The case has been referred to the Home Affairs Bureau for investigation. The outcome of the investigation will be considered by COMPAG in due course.

Case 6: Complaint against the MTR Corporation Limited for not reducing fares (case closed)

15. The complainant was concerned about the fact that passenger fares are determined by the MTR Corporation Limited (“MTRCL”) and the fares have not been reduced for a number of years.

16. COMPAG invited THB to look into the case. THB advised that the Fare Adjustment Mechanism of the MTRCL, which forms part of the rail merger agreement between the Government and the MTRCL, has been in place since the rail merger in 2007. As fares of MTR have been adjusted in accordance with this open, transparent and legally binding mechanism based on objective parameters, COMPAG did not see any clear or identifiable subject matter relating directly to competition. As the complainant cannot be contacted for more information, COMPAG decided that no further investigation be made.

(B) Cases concerning Entities not subject to the Competition Rules and Enforcement Provisions of the Ordinance

Case 7: Complaint about funding schemes offered by a university (case closed)

17. The complainant, who was an operator of a start-up IT company, claimed that its largest competitor in Hong Kong, which was another start-up company, enjoyed substantial financial support under a scheme funded by a university in Hong Kong. The complainant alleged that it was difficult for other privately-owned and self-funded organisations to compete with university-funded organisations.

18. As the information provided is vague to the extent that a meaningful investigation cannot be conducted, nor can the complainant be contacted for more information, COMPAG decided that no further investigation be made.

Case 8: Alleged anti-competitive policy of the Radiation Board on disposal of exit signs containing tritium (under investigation)

19. The complainant alleged that under the policy of the Radiation Board, disused exit signs containing tritium must be collected and disposed of by the original manufacturers of the signs. The complainant alleged that the policy in effect foreclosed the market for the collection and disposal of disused tritium exit signs and allowed any person who manufactures these

signs to charge monopoly prices for the removal and disposal of such signs. The complainant claimed that a tritium exit sign manufacturer with a substantial degree of market power had been charging a price much higher than the price charged by the complainant for the removal and disposal of the signs.

20. The case has been referred to the Food and Health Bureau for investigation. The outcome of the investigation will be considered by COMPAG in due course.

Case 9: Alleged anti-competitive conduct of the Hong Kong Housing Society in relation to the Senior Citizen Residence Scheme (under investigation)

21. The complainant alleged that the contractual requirement for tenants of Senior Citizen Residence Scheme to procure the Basic Care Services provided by the Hong Kong Housing Society might constitute anti-competitive tying and bundling.

22. The case has been referred to THB for investigation. The outcome of the investigation will be considered by COMPAG in due course.