

競爭政策諮詢委員會工作報告

COMPAG

Competition Policy Advisory Group Report

2017

(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 consumers and business sector.

2. In May 1998, COMPAG issued the Statement on Competition Policy, 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 into the Legislative Council in July 2010. The Bill was passed in June 2012 to become the Competition Ordinance (Cap. 619), which fully commenced on 14 December 2015.

6. Upon full commencement of the Competition Ordinance, competition-related complaints relating to the Ordinance are handled by the Competition 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 2017.

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

The Competition 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 2017, with personal data excluded in accordance with the arrangements set out in Chapter 2. None of the complaints 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 invited to look into the case. The outcome and latest position are set out below.

(A) Cases concerning Government Policies and Practices

Case 1: Complaint about the permitted operating areas of the Urban and New Territories taxis (case closed)

2. The complainant alleged that the distinction of Urban and New Territories (“NT”) taxis was anti-competitive due to the limitations imposed on the permitted operating areas for NT taxis. As a passenger, the complainant claimed that such policy caused inconvenience as he needed to change taxi in order to go to his destination.

3. COMPAG invited the Transport and Housing Bureau (“THB”) to look into the case. According to THB, the permitted operating areas for NT taxis are transparent to all existing and potential operators. In addition, the distinction between different types of taxis itself does not pose any restrictions/barriers to market entry and the entry into a particular type of taxi markets is an independent decision of individual market players.

4. COMPAG also noted that the complainant’s claim that the above policy caused inconvenience to passengers is itself not a competition issue. Passengers can choose to take either NT or urban taxis to go to destinations within the permitted operating areas of NT taxis. As the complaint contains no clear and identifiable subject matter relating directly to competition, COMPAG decided that no further investigation be made.

Case 2: Complaint about application for Wide Load Permit from the Transport Department (case closed)

5. The complainant alleged that the Transport Department (“TD”) only accepted invoices from air transport companies as supporting documents for Wide Load Permit (“WLP”) applications. The complainant claimed that WLP was also essential for non-air transport companies.

6. COMPAG invited THB to look into the case. THB advised that WLP applications are accepted from registered owners of all goods vehicles, and that under normal circumstances, TD would not require supporting documents other than those set out in the application form from applicants.

7. As the complaint that TD only accepted invoices from air transport companies as supporting documents for WLP applications is based on incorrect information or the complainant's misunderstanding of the procedure, COMPAG did not see any clear and identifiable subject matter relating directly to competition. As the complainant cannot be contacted for more information, COMPAG decided that no further investigation be made.

Case 3: Complaint about the policy on the use of off-site prefabricated steel reinforcing bars for public works (case closed)

8. The complainant expressed concerns about the Development Bureau ("DEVB")'s new policy of permitting the use of off-site prefabricated steel reinforcing bars ("rebars") for public works, while requiring that the pre-fabrication be done at approved yards on a list maintained by the Civil Engineering and Development Department. The complainant claimed that there was only one approved yard on the list, and its charge was higher than the prevailing market rate. The complainant also queried whether there would be sufficient land supply for enough yards to allow healthy competition under the new policy.

9. COMPAG invited DEVB to look into the case. According to DEVB, the new off-site rebars prefabrication arrangement only provides an alternative option to, and does not replace, the prevailing arrangement of on-site steel rebars fabrication. Contractors may continue to process rebars on-site if they prefer. As for the approval system for off-site yards, a yard may be included on the List of Approved Steel Reinforcing Bar Prefabrication Yards for Public Works ("the List") if they can meet the requirements promulgated.

10. COMPAG did not consider the administration of the List anti-competitive. As there is no clear and identifiable subject matter relating directly to competition, and the complainant cannot be contacted for further information, COMPAG decided that no further investigation be made.

Case 4: Complaint about application for registration as specialist contractor from the Buildings Department (case closed)

11. The complainant alleged that a committee under the Buildings Department ("BD") did not approve his application for the registration of specialist contractor (ventilation works) even though he had met the relevant requirements, because the committee consisted of his competitors. The complainant considered that the committee restricted him from entering the market.

12. COMPAG invited DEVB to look into the case. According to DEVB, Contractors Registration Committees ("CRCs") are independent bodies appointed by the Building Authority ("BA") under the Buildings Ordinance ("BO"). CRCs assist BA in considering applications for inclusion in the contractors' registers. The CRC in charge of specialist contractors (ventilation works) consists of a mix of professionals and industry practitioners, and arrangements are in place to avoid any member dominating the CRC's consideration.

13. COMPAG noted that applications for inclusion in the specialist contractors' register are open to all qualified persons, and a mechanism has been put in place to avoid any CRC member dominating the CRC's consideration, as well as to avoid conflict of interests. Also, the final decision of whether to approve an application rests with the BA, not the CRC.

14. As there is no clear and identifiable subject matter relating directly to competition, and the complainant cannot be contacted for further information, COMPAG decided that no further investigation be made.

Case 5: Complaint about the procurement policy of on-site pre-school rehabilitation services (under investigation)

15. The complainant alleged that under the policy of the Social Welfare Department, only non-government organisations ("NGOs") were invited to submit tenders for the provision of On-site Pre-School Rehabilitation Services. Non-NGOs (e.g. SMEs in private practice) were not invited to participate in the tendering process.

16. The case has been referred to the Labour and Welfare Bureau for investigation. The outcome of the investigation will be considered by COMPAG in due course.

Case 6: Complaint against the Transport Department favouring franchised buses over non-franchised buses (under investigation)

17. The complainant alleged that TD had rejected an application from a non-franchised bus operator to increase the frequency of its services on an existing route. However, several months later TD approved a franchised bus operator's proposal to begin running a new service on a similar route. The complainant complained that TD favoured franchised buses over non-franchised buses.

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

Case 7: Complaint about franchised bus service (under investigation)

19. The complainant alleged that TD engaged KMB to provide franchised bus service while cancelling the residents' bus service which charged a lower price than KMB.

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

Case 8: Complaint about residents' service operated by non-franchised buses (under investigation)

21. The complainant alleged that TD reduced the frequency of the shuttle bus service for a residential estate on the ground that the service overlapped with that provided by KMB.

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

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

Case 9: Complaint about Secondary One Student Admission (case closed)

23. The complainant alleged that some Caput Secondary Schools (“CSSs”) within the same school district have agreed not to use their vacant places arising from the Secondary School Places Allocation (“SSPA”) System to admit students who have been allocated places in other CSSs. The complainant alleged that as CSSs receive funding from the Government based on the number of students enrolled, such agreement was to prevent reduction in Government funding for certain CSSs or to protect certain CSSs from being requested by the Education Bureau (“EDB”) to cease operation due to insufficient student intake.

24. COMPAG invited EDB to look into the case. According to information provided by EDB, there are only two CSSs in Hong Kong and they are located in different districts. In general, students are allocated Secondary One (“S1”) places in ordinary public sector secondary schools (i.e. the 31 government schools, 360 aided schools and two CSSs) through SSPA. After the announcement of SSPA results and registration of students allocated in early July, schools can handle their vacant S1 places, if any, according to their own admission criteria. EDB has advised schools to consider drawing up admission policy and inform potential applicant parents/students of their admission criteria, which should comply with the laws of Hong Kong and legislation on equal opportunities.

25. COMPAG noted that the two CSSs in Hong Kong are located in different districts and hence the complainant’s allegation is factually incorrect. While it might be possible that the complainant’s allegation meant to refer to other categories of secondary schools, the complainant has not provided any specific information about the district(s) concerned or schools involved. Given that there are almost 400 public-sector secondary schools in 18 districts, COMPAG considered that the information furnished in the complaint was insufficient to facilitate a meaningful investigation. As the complainant cannot be contacted for more information, COMPAG decided that no further investigation be made.

26. Nevertheless, COMPAG is mindful that although public-sector secondary schools are exempted from the application of the competition rules and enforcement provisions of the Competition Ordinance (Cap. 619), they should still act in accordance with the relevant principles. COMPAG has reminded EDB that it should stop any school admission arrangements which are inconsistent with the provisions of the Ordinance.

Case 10: Complaint about the procurement policy of the Hong Kong Housing Authority for lift maintenance service (case closed)

27. The complainant alleged that under the Deed of Mutual Covenant (“DMC”) of a public housing estate, the contractor for lift maintenance in the estate must be on the list of contractors maintained by the Housing Authority (“HA”), which only provides limited options. Even though a contractor is approved by the Electrical and Mechanical Services Department, it may not be included on HA’s list. The complainant also pointed out that using a contractor on HA’s list would cost substantially more.

28. COMPAG invited THB to look into the case. COMPAG noted from the information provided by THB that, among public rental estates, those with flats sold under the Tenants Purchase Scheme (“TPS”) are governed by DMC. In addition to HA’s list of lift and escalator contractors, contractors on the registers maintained under the Buildings Ordinance as well as the List of Approved Suppliers of Materials and Specialist Contractors for Public Works, can also be engaged to undertake lift maintenance projects in TPS estates. Contractors who meet the relevant requirements may apply for inclusion on the registers/lists.

29. COMPAG did not consider the administration of the lists of lift and escalator contractor anti-competitive. As the information furnished in the complaint is incorrect, there is no clear and identifiable subject matter relating directly to competition, and the complainant cannot be contacted for further information, COMPAG decided that no further investigation be made.

Case 11: Complaint about the procurement policy of the Hong Kong Housing Society (case closed)

30. The complainant alleged that the Hong Kong Housing Society (“HKHS”) allowed its authorised contractors to participate in the tenders for works at Tivoli Garden, a subsidised sale estate developed and managed by HKHS under the Sandwich Class Housing Scheme, instead of adopting open tenders. He alleged that in the tendering exercise for the Periodic Inspection of Electrical Installations (“PITC”) at Tivoli Garden, only two bids were received and the quotations submitted were higher than that offered by another contractor in the market.

31. COMPAG invited THB to look into the case. According to the information provided by THB, HKHS maintains Approved Contractor Lists ("ACL") for various types of services and facilities related to property management. Any contractor who is able to meet specified technical, financial and licensing criteria can apply any time for admission to the ACLs maintained by HKHS. The qualifications, requirements and other criteria as well as the procedures for a contractor to apply for admission to the ACLs are clearly promulgated on the website of HKHS and are transparent to all potential applicants.

32. COMPAG did not consider the administration of the ACLs anti-competitive. As there is no clear and identifiable subject matter relating directly to competition, and the complainant cannot be contacted for further information, COMPAG decided that no further investigation be made.

Case 12: Complaint about the procurement policy of the Hong Kong Trade Development Council (case closed)

33. The complainant alleged that the Hong Kong Trade Development Council ("TDC") outsourced the holding of trade fairs in Mainland China to a certain company without conducting a tender.

34. COMPAG invited the Commerce and Economic Development Bureau ("CEDB") to look into the case. CEDB advised that TDC organises all trade fairs by itself, no matter in Hong Kong, Mainland China or elsewhere. In the course of organising trade fairs, TDC may procure individual services, such as venue set-up, catering, etc. from service providers. TDC has established procurement guidelines for the procurement of goods and services, having regard to the principles of openness, fairness and transparency.

35. COMPAG noted that TDC does not outsource the holding of trade fairs in Mainland China to a third party as alleged by the complaint. As the complainant cannot be contacted for more information, COMPAG decided that no further investigation be made.

Case 13: Complaint about the procurement policy of the Hong Kong School Sports Federation (case closed)

36. The complainant alleged that the Hong Kong Schools Sports Federation (“HKSSF”) had appointed the same sport goods distributor for the past ten years as the sole sponsor of the balls used in primary school sports competitions without conducting a procurement process. The complainant considered that the sponsorship arrangement might prevent other manufacturers or distributors to compete in the supply of balls to schools, because the schools generally tended to procure the same products as those used in competitions.

37. COMPAG invited the Home Affairs Bureau (“HAB”) and EDB to look into the case. According to information provided by the HKSSF, the balls in question were sponsored for, and not procured by, HKSSF. Also, there has only been one sponsor who offered to provide balls for the sports competitions concerned, and this sponsor was only one of the distributors. HAB advised that HKSSF’s acceptance of the said sponsorship was in line with the relevant guidelines. In addition, member schools of HKSSF are not obliged to procure the same brands of balls for use in HKSSF competitions, and even if they choose to do so, there are more than one distributor for them to procure from.

38. COMPAG did not consider the acceptance of the said sponsorship by HKSSF anti-competitive. As there is no clear and identifiable subject matter relating directly to competition, COMPAG decided that no further investigation be made.

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