

競爭政策諮詢委員會工作報告

COMPAG

Competition Policy Advisory Group Report

2002 - 2003

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1. Introduction

As one of the world's most vibrant economies, Hong Kong thrives on competition. In fact, "competition" is more than a buzzword for businesses in Hong Kong – it is a concept that is ingrained in the local culture and a motto behind the quest to survive and excel in the ever changing business environment, domestically and globally.

The Competition Policy Advisory Group (COMPAG), the Government's high level forum dedicated to examining, reviewing and advising on competition issues, assumes a pivotal role in nurturing and promoting this pro-competition culture. The ultimate objective is to benefit the community at large. The essential tool is through enhancing economic efficiency. The necessary ingredients are an overall business environment conducive to competition and free trade as well as a market that is truly accessible and contestable.

In 2002-03, COMPAG continued to uphold and refine Hong Kong's non-interventionist competition policy, which seeks to address the special concerns, circumstances and needs of individual sectors by way of administrative or legislative measures appropriate to circumstances. It ensured that bureaux and departments process competition-related issues under their own portfolio, initiate remedial measures against anti-competitive practices, and promote competition in the respective sectors.

This report sets out the work of COMPAG from April 2002 to March 2003. As stated in Chapter 5, the COMPAG Report has been complemented by the COMPAG website: www.compag.gov.hk since October 2002 to provide members of the public and interested parties overseas with instant and convenient access to information on the work of COMPAG through the Internet.

The report highlights in Chapter 2 seven new initiatives in promoting competition in the respective sectors examined by COMPAG during the year. Apart from developing a set of draft guidelines to provide the business sector with objective pointers, benchmarks and principles to assess Hong Kong's overall competitive environment; define and tackle anti-competitive practices; as well as encourage various sectors to proactively implement Hong Kong's competition policy, the initiatives covered pro-competition efforts by the

Government in the telecommunication, securities trading, transportation, lift maintenance and other sectors. Chapter 3 provides an update on the previous initiatives.

The Government takes complaints against anti-competitive practices seriously. COMPAG keeps track of, and tenders advice on, investigations and follow up actions on such complaints carried out by individual bureaux and departments and examined 14 of them in the past year. Details of the cases are set out in Chapter 4. Major developments on the international front are outlined in Chapter 6.

2. New Initiatives

Initiative 1: Guidelines for maintaining a competitive environment and defining and tackling anti-competitive practices

In 1998, COMPAG promulgated the Statement on Competition Policy to define the Government's pro-competition principles, set out business practices that may be considered restrictive and detrimental to economic efficiency or free trade, and provide a comprehensive, transparent and over-arching competition framework. It is implemented through a range of sector-specific legislative and non-legislative measures ranging from licensing conditions, contractual provisions, codes of practice, administrative means, to public censure.

To encourage various sectors to proactively implement the Hong Kong's competition policy and facilitate the drawing up of their own codes of conduct, COMPAG developed a set of draft guidelines in December 2002 to provide the business sector with objective pointers, benchmarks and principles to assess Hong Kong's overall competitive environment and define and tackle anti-competitive practices. The draft guidelines included –

- (i) major elements such as the rule of law; a transparent investment and tax regime; and free flow of trade, foreign exchange and information etc. to gauge whether the overall business environment in Hong Kong is conducive to competition and free trade;
- (ii) a three-step test to gauge whether certain business practices limit market accessibility/contestability and impair economic efficiency/free trade to the detriment of the overall interest of Hong Kong; and
- (iii) specific indicators to help-detect anti-competitive practices and abuse of dominant market position activities which may directly or indirectly restrict competition.

The draft guidelines also provided a list of examples of anti-competitive practices or market-distorting activities including –

- price-fixing to increase the cost of supply;

- preventing or restricting the supply of goods or services to competitors;
- market-sharing agreements based on geographic or customer demarcations, including unfair or discriminatory standards made between members of a trade or professional body to deny newcomers market access or reduce their competitiveness in the market;
- joint boycott, bid-rigging, market allocation, sales and production quotas intended to increase the cost and reduce the choice and availability of supply.

COMPAG had consulted and invited 30 chambers of commerce, trade and industry organizations to give their views and comments on the draft guidelines. It aimed to conclude the consultation and to promulgate the guidelines before the end of 2003. It would further encourage individual business sectors to develop their own codes of conduct on the basis of the guidelines and monitor the implementation of the guidelines.

Initiative 2: Regulation of mergers and acquisitions in the telecommunications market

Following a consultation exercise in 2001, the Government introduced the Telecommunications (Amendment) Bill 2002 in May 2002 to provide a comprehensive and clear framework for the regulation of mergers and acquisitions in the telecommunications market. The Bill aims to promote effective competition and assist the industry in making informed business decisions on merger and acquisition matters. Under the Bill, there is an *ex post* regulatory regime whereby the Telecommunications Authority is empowered to regulate completed mergers and acquisitions which have, or are likely to have, the effect of substantially lessening competition in a telecommunications market. There is also a channel for seeking the Telecommunications Authority's prior consent on a voluntary basis. Compared to an *ex ante* regulatory regime whereby licensees must seek TA's prior approval before proceeding with a merger and acquisition, the new proposal will help minimize the compliance burden on the industry.

Decisions of the Telecommunications Authority are subject to appeal to the Telecommunications (Competition Provisions) Appeal Board, which is already handling appeals on competition matters relating to sections 7K to 7N of the Telecommunications Ordinance. The Bill is now being scrutinized by the Legislative Council.

Initiative 3: Removal of exempt status for banks in the provision of securities trading services

Banks were previously granted exempt status for their securities dealing business under the Securities Ordinance. Their business was subject to regulation and supervision by the Hong Kong Monetary Authority (HKMA) in the context of their banking business as a whole instead.

Under the new Securities and Futures Ordinance, which commenced operation on 1 April 2003, banks no longer enjoy exempt status for their securities dealing business. Banks and their relevant staff have to satisfy the “fit and proper” criteria promulgated by the Securities and Futures Commission (SFC) and respectively be authorized by the SFC as “registered institutions” and included in the register maintained by the HKMA, if they wish to engage in securities dealing and other regulated activities. The same set of regulatory requirements applies to banks and stockbrokers including their respective staff, save in areas where there are requirements under the Banking Ordinance that achieve similar regulatory objectives. Banks, stockbrokers and their staff are all subject to similar supervisory and investigative powers, as well as disciplinary and criminal sanctions for any misconduct.

Initiative 4: Opening up the dangerous goods vehicular ferry services market

Previously, the Hongkong & Yaumati Ferry Co. Ltd. (HYF) was the sole licensed operator for the provision of ferry services for dangerous goods vehicles.

HYF's licence for the provision of ferry services for dangerous goods vehicles expires in January 2004. To promote competition, the Transport Department put up the services for open tender in March 2003 and removed the sole operator arrangement.

Initiative 5: Review of arrangements for short-listing consultants for public building projects

The Architectural and Associated Consultants Selection Board (AACSB) maintains a list of consultants for undertaking architectural and associated consultancy. Previously, these consultants were short-listed for invitation of submission of technical and fee proposals for public building projects on the basis of “least total fees from AACSB consultancies in the previous three years”. Under this arrangement, consultants which had not undertaken any consultancy from AACSB would be given priority but consultants which had been granted more AACSB contracts would have a lower chance of being invited.

The Environment, Transport and Works Bureau reviewed the above arrangement. To encourage more competition, with effect from 1 September 2002, architectural and associated consultants on the AACSB’s list are divided into two bands according to the number of qualified professional staff and years of establishment. Band 1 consultants are eligible for participation in projects with estimated value exceeding \$150 Million, and Band 2 consultants are eligible for participation in projects with estimated value up to \$150 Million. All consultants in the appropriate band will be invited to submit Expression of Interest proposals for the relevant consultancy. These proposals would be assessed according to a set of pre-determined criteria, and the short-listed consultants would be invited to submit technical and fee proposals for further evaluation. The new arrangement ensures that all qualified consultants have a chance to compete for the relevant consultancy.

Initiative 6: Release of technical information in the Operation and Maintenance (O&M) manuals by lift manufacturers

Lift owners did not have access to certain technical information required for the maintenance of their lifts. This had made it difficult for them to find alternative lift maintenance contractors.

In collaboration with the Consumer Council, the Electrical and Mechanical Services Department (EMSD) has been working closely with the industry on measures to enhance competition in the lift maintenance market. EMSD is discussing with lift manufacturers/contractors on the provision of technical information in the Operation and Maintenance (O&M) manuals for the lift owners. EMSD expects that the detailed requirements and implementation arrangement for the provision of O&M manuals would be finalized with the industry within 2003. In addition, EMSD is preparing an Owners' Guidebook to provide building owners with general information and related technical issues for lift maintenance. The Guidebook is expected to be made available to building owners by end 2003.

Initiative 7: Review of trades permitted in public housing estates

Previously, only trades included in the list of permitted trades kept by the Housing Authority were considered for operation in commercial premises in public housing estates.

The Housing Authority conducted a review in May 2002 and endorsed a set of new guidelines to allow the Housing Department to consider proposals from trades outside the list to lease vacant shops not reserved for other purposes.

3. Progress of Previous Initiatives

Over the years, COMPAG has examined and monitored the progress of a large number of new initiatives targetted at promoting competition in various sectors, many of which have already been successfully implemented. This Chapter highlights those initiatives which have seen new developments in their implementation in 2002-03.

Initiatives	Progress
Energy	
(1) Explore the feasibility of increasing competition in the electricity supply sector	<p>The final draft report of the technical study on increasing interconnection between the two power companies was prepared. The Electrical and Mechanical Services Department was completing a detailed evaluation of the technical content.</p> <p>The review of the electricity market aims to draw up in good time a broad framework for the development of the electricity supply sector to succeed the current Scheme of Control Agreements in 2008.</p>
Legal	
(2) Remove privileges conferred on barristers or advocates from selective regions	The parts of the Legal Practitioners (Amendment) Ordinance 2000 and the relevant subsidiary legislation pertaining to the removal of privileges came into operation on 28 March 2003.

Initiatives	Progress
(3) Relax the restrictions on solicitors in terms of the right of audience in the higher courts	The Department of Justice is consulting the Bar Association and the Law Society on the proposal.
Import and Export Trade	
(4) Full liberalization of Rice Trade on 1 January 2003	<p>The Trade and Industry Department had removed all registration criteria for rice importers as from 1 January 2003. Anyone who intends to import rice into Hong Kong may apply to be registered as an importer any time.</p> <p>The import quota was also removed on the same date. The import level of rice is determined by individual importers. The Government only maintains a minimum reserve stock (for about 15 days' local consumption at about 13,500 tonnes) to cater for emergencies.</p> <p>Statistics on market situation have been disseminated to all registered importers and made available to all interested parties since January 2003.</p>

Initiatives	Progress
(5) Remove restrictions on the alcoholic strength of Chinese - type spirits	The Customs and Excise Department has consulted the trade on the removal of the requirement on the alcoholic strength of Chinese-type spirits and introduction of the requirement for clear labelling of alcoholic strength. The trade was supportive of the proposals. The Administration has consulted the Legislative Council for views on the related legislative amendments, and aims to present the legislative amendments to the Council by mid-2003.
(6) Liberalize parallel importation of computer programs	The then Commerce and Industry Bureau introduced a Bill into the Legislative Council on 19 December 2001 to remove the relevant restrictions. The Bill is being scrutinized by a Bills Committee of the Legislative Council.

Initiatives	Progress
(7) Engage more front-end electronic data interchange (EDI) service providers	The Commerce, Industry and Technology Bureau (CITB) has taken action to introduce competition in the provision of front-end electronic services for certain trade-related official documents from 2004. The relevant tender exercise has been completed and one new service provider is awarded the service contract. In parallel, CITB is negotiating with Tradelink to provide services on a non-exclusive basis after 2003.
Telecommunication and Broadcasting	
(8) Introduce broadcasting satellite services (BSS)	The then Information Technology and Broadcasting Bureau issued a guidance note in December 2001 for those interested in leasing transponders for the provision of BSS. A satellite carrying four BSS transponders was scheduled to be launched in April 2003. The BSS facility provider was required by its licence to make available the transponders in a non-discriminatory manner.

Initiatives	Progress
(9) Regulate set-top boxes	The Office of the Telecommunications Authority aimed to conduct a consultation on the policy, technical and regulatory issues relating to set-top boxes immediately after the Government had finalized the policy decisions on digital terrestrial broadcasting to ensure that set-top boxes would not impede competition in a digital environment.
(10) Issue new FTNS licences for operation from 2003	The local FTNS market has been fully liberalized from 1 January 2003. There is no pre-set limit on the number of licences to be issued, no deadline for applications, and no requirement on performance bond or capital expenditure. The level of investment would be determined by the market.
(11) Review of the retail payment systems in Hong Kong	The HKMA continued to implement the recommendations of the 2001 comprehensive review of retail payment systems in Hong Kong, which examined the accessibility, costs, pricing, efficiency, competition and risks associated with such systems. It was working with representatives of credit cards, debit cards and multi-purpose stored value cards to develop appropriate codes of practices to enhance sectoral efficiency and transparency.

Initiatives	Progress
(12) Abolition of minimum brokerage commission	The Board of Directors of the Hong Kong Exchanges and Clearing Limited confirmed on 15 January 2003 its earlier decision that the Minimum Commission Rate Rule would cease to have effect from 1 April 2003. The cessation had been implemented since then.
(13) Remove restrictions on the issue of new trading rights of the Stock Exchange of Hong Kong Limited (SEHK) and the Hong Kong Futures Exchange Limited (HKFE)	The moratorium on the issue of new trading rights of SEHK and HKFE was removed on 6 March 2002. The lower limit on the price of new trading rights would also be removed on 6 March 2004.
(14) Relax the market entry criteria for the banking sector	The market entry criteria for the banking sector were relaxed in May 2002. The main changes include replacing the asset size criterion for foreign bank applicants by the much lower size criteria for local bank applicants and relaxing the criteria for locally incorporated restricted licence banks and deposit-taking companies to upgrade to full licensed bank status.

4. Complaints

Case 1: Competition in the Supply Chain of Pork

In early May 2002, the two large supermarket chains lowered their retail price of pork. Pig buyers boycotted the auctioning of live pigs in the slaughterhouses on 6 May. This resulted in a suspension of supply of fresh pork at retail outlets on 7 May. Notwithstanding no formal complaints had been received, COMPAG looked into the competition situation in the supply chain of pork to determine whether there was any competition issue that would require attention.

COMPAG issued a report in December 2002. It concluded that there was a free play of market forces in the local pork market and that it was not necessary for the Government to take any action to intervene in the operation of the market forces.

The report noted that there was no restriction on the origin of live pigs, chilled pork and frozen pork subject to the necessary statutory requirements. There was also no restriction on the quantity of imported live pigs and live pigs supplied by local farms. Live pigs and pork from different origins were therefore free to compete with each other.

As regards the boycott action taken by pig buyers in May 2002, the report acknowledged that any collective/collusive action taken by any group of trader to maintain the price of a commodity at a certain level, including the boycott action taken by pig buyers, was anti-competitive. However, the absence of restriction to entry to the trade of pork was an effective safeguard against such collective/collusive action.

COMPAG could not find any evidence to substantiate the claim that the two large supermarket chains had adopted a strategy of predatory pricing. The report noted that predatory pricing was unlikely to work in the pork market, as any significant price lift after an initial price lowering would induce market stalls for selling fresh pork to re-enter the market, given that there was little barrier to entry.

The full report on the supply chain of pork is available at the COMPAG's website: www.compag.gov.hk.

Case 2 : Provision of securities trading services by banks

The Hong Kong Securities & Futures Industry Staff Union wrote to the Legislative Council expressing concern about the Government allowing banks to provide security trading services without the relevant licence from the Securities and Futures Commission. The Union reckoned that this would adversely affect the standard of service of the trade because the relevant staff in the banks might not be suitably trained and monitored. In addition, the banks, with their strong financial background, posed a direct threat to the licenced securities companies.

The Legislative Council Secretariat referred the Union's views to the then Financial Services Bureau. The latter advised that under the new Securities and Futures Ordinance, which commenced on 1 April 2003, banks no longer enjoy exempt status for their securities dealing business. The same set of regulatory requirements applies to banks and stockbrokers, save in areas where there are requirements under the Banking Ordinance that achieve same regulatory objectives. Only bank staff who satisfy the Fit and Proper Criteria laid down by the Securities and Futures Commission (the "SFC") and included in the register maintained by the Hong Kong Monetary Authority (the "HKMA") are permitted to engage in securities dealing and advising. Banks, stockbrokers and their staff are all subject to similar disciplinary and criminal sanctions for any misconduct.

Case 3: Alleged Market Allocation amongst Approved Decoration Contractors for Public Housing

A tenant of a public housing estate alleged to the Consumer Council that a decoration contractor approved by the Housing Authority (HA) touted for business at his flat and told him that his flat had been “designated” for the company. When the complainant tried to obtain quotation from another approved decoration contractor, he was referred back to this “designated contractor”. Deprived of a choice, the complainant engaged this “designated contractor” for the renovation of his flat, and the complainant alleged that the work was substandard and over-priced.

The Consumer Council took up this case with the HA. The HA advised that -

- (i) it maintains a list of approved decoration contractors for renovation work in new developments but same arrangement does not apply to existing public housing developments;
- (ii) tenants in a new development wishing to renovate their premises may either do the renovation themselves or engage an approved decoration contractor for the work;
- (iii) Approved Contractors are selected by the HA having regard to their size, financial soundness and past performance. The HA will appoint Approved Contractors for a new development by ballots, on the basis of one decoration contractor for every 250 flats to allow sufficient competition. For example, twelve decoration contractors will be appointed for a new development with 3,000 flats and the tenants may choose from any of the twelve approved contractors;
- (iv) market allocation among approved contractors violates the terms and conditions of appointment and will lead to revocation of the appointment; and
- (v) according to records kept by HA, most tenants choose to renovate the flats themselves and approved contractors are engaged by only about 15% of the leased flats.

Having examined the relevant information, the Consumer Council concluded that HA had put in place appropriate procedures to monitor the extent of competition in renovation work for leased flats in new developments and to deter approved contractors from engaging in anti-competitive conduct. In addition, the small market share of the approved contractors would make it difficult for them to charge excessive prices. Hence, the Council concluded that the matter did not warrant further inquiry.

Case 4 : Allocation of clinics in public housing estates

The Hong Kong Doctors Union Ltd, Hong Kong Dental Association and Estate Dentists Group jointly filed a submission to the Housing Authority (HA) complaining that the existing arrangement for allocating clinics in public housing estates through open tender was against the interests and wishes of the people of Hong Kong. The three bodies requested the HA to replace the open tender system with an “open ballot system” under which clinics would be allocated to individual doctors and dentists who actually ran them, and to establish an independent appeal mechanism to handle complaints in relation to the rental of estate clinics.

In response, the Housing Authority indicated that it had reviewed the system on letting of clinics in public housing estates. The HA considered that the open tender system was fair, open and transparent, and that medical and dental practitioners had bid actively for premises with prospects for development of a viable practice. There was no evidence that open tender had led to higher charges for services, monopolization of services or other problems. The HA therefore decided that the letting of clinics through open tender should continue, but the tendering process and prevailing rent would be made more transparent to enable potential bidders to determine the appropriate levels of bids and formulate their business proposals. For example, instead of tendering individual clinics premises on an estate basis, the Housing Authority groups all vacant clinic premises in public housing estates for tendering at two-to-three month intervals. Information on the premises and the rents of successful bids in the preceding six months would be made available to the Hong Kong Medical Association and on the Housing Authority website.

Case 5: Alleged predatory pricing engaged by a domestic pay television licensee

The complainants alleged that a domestic pay television programme service provider's promotional packages constituted predatory pricing and that it had abused its dominant position in the pay TV market by engaging in a predatory pricing behaviour.

The Broadcasting Authority (BA) conducted a preliminary inquiry into the case according to its investigation procedures. It concluded that within the pay TV market in Hong Kong, although it appears that, prima facie, the service provider fits the criterion of presumed dominance, there was no reason to believe that the service provider's promotional packages had the necessary purpose or effect of preventing or restricting competition. The service provider had offered similar promotions before the new entrants had entered the market. There was no evidence that competition in the pay TV market was being adversely affected by the promotional packages. The BA considered that there was no justification for proceeding to a second stage full investigation.

Case 6: Alleged discriminatory service delivery time by network service provider

The complaint was lodged with the Telecommunications Authority (TA) in August 2001. A preliminary report was contained in the COMPAG Report 2001-2002 (Case 2 in the chapter on complaints). The TA completed investigation of the case in August 2002 and concluded that there was insufficient evidence of breach of the Telecommunications Ordinance. The complainant was an Internet Service Provider (ISP A) who subscribed to the service of a network service provider (NSP) to provide broadband Internet access service to its customers. The complainant alleged that it took 28 days for delivery of the network services to him, whereas another ISP (ISP B) which was affiliated to the NSP obtained the services within ten days.

The NSP's gazetted terms and conditions provided for a service delivery time of 28 days. Nevertheless, to make it easier for ISPs to deal with customers' enquiries about service delivery times, the NSP informed all its ISP customers on 17 September 2001 that its target service delivery time was seven days. The TA noted that between April and July 2001, the average time for the NSP to deliver service to ISP B was about 10 days.

In December 2001, the TA wrote to all ISPs offering broadband Internet access service to seek information on their experience in obtaining the service from the NSP. Responses from six ISPs were received, which revealed that it took about 1-3 days for the NSP to confirm orders. Site visits to the service hotline centres of ISP B and NPS did not reveal any evidence of the NSP applying different treatments in processing orders by ISP B and other ISPs so as to give undue preference to ISP B.

The TA considered that after the NPS had informed all ISPs of the new target service delivery date on 17 September 2001, there was insufficient evidence to demonstrate that the NPS had given undue preference to ISP B. On the other hand, the TA could not be sure that there had been special arrangement before 17 September 2001 between the NSP and ISP B and such special arrangement, if existed, had placed a competitor at a significant disadvantage, or that competition had been prevented or substantially restricted. The TA therefore concluded that on the basis of information available to him that it was not open to him to pursue the complaint further.

Case 7: Alleged discriminatory offer of promotional service plan to customers by a fixed telephone line operator

The complaint was lodged with the Telecommunications Authority (TA) in February 2003. The complainant said that a fixed telephone line operator (the operator) published a promotional service plan in the Government Gazette in January 2003 stating that residential customers who subscribed to this promotional service plan could enjoy a number of benefits including HK\$20 refund on monthly rentals for nine months. However, when the complainant phoned the Customer Services of the operator for subscription to the plan, the Customer Services staff indicated that they had not been notified of such a promotional plan and thus could not offer it. In the following day, the complainant made another enquiry to the Customer Services and the staff claimed that the promotional plan would only be offered to selected groups of customers. The complainant recorded this conversation in a compact disc, a copy of which was submitted to the TA.

According to the TA, the operator submitted the relevant proposal for approval prior to launching the promotional plan. As approved, the promotional plan should be offered to all new and existing residential customers non-discriminatorily subject to a ceiling of 50,000 customers on a first-come-first-served basis. The TA is concerned that availing the promotional plan to selected groups of customers, in particular customers in certain selected districts, is in contravention to the promotional plan approved by the TA.

Section 7K, L and N of the Telecommunications Ordinance prohibit the operator from engaging in anti-competitive conduct and abuse of its dominant position. Similar provisions are available in the fixed telecommunications network service (FTNS) licence of the operator. Moreover, General Condition 10 of the FTNS licence of the operator requires the operator to comply with a customer's request for the services as published in the Government Gazette. The TA was collecting information to decide whether there had been a breach of the Telecommunications Ordinance and the relevant provisions in the operator's licence.

Cases 8 and 9: Tender of Green Mini Bus Routes

The Hong Kong Public and Maxicab Light Bus United Association (HKPMLBUA) and the Environmental Light Bus Alliance wrote separately to COMPAG complaining against the tender conditions for a package of Green Minibus (GMB) routes published in the gazette in March 2002, alleging that requiring the operator to use Liquefied Petroleum Gas (LPG) light buses or models with similar or better emission standards was favouring LPG light buses while discriminating against electric and Euro III diesel light buses. The two organizations also complained against the monopoly in the supply of light buses in Hong Kong.

The HKPMLBUA also expressed dissatisfaction with the Administration's decision of not including Euro III diesel light bus in the incentive scheme, under which financial assistance will be granted to owners of existing diesel light buses for replacement of such diesel light buses by electric or LPG light buses.

The Environment, Transport and Works Bureau (ETWB) advised that generally speaking LPG and Euro III diesel light buses are subject to the same assessment criteria. In case there are special circumstances, they would be considered on a case-by-case basis. The package of GMB routes mentioned above was a special case:

- (a) as a positive measure taken by Transport Department (TD) to help the GMB trade, TD encourages developers of private housing developments to allow GMB operation to serve their developments. The case in question involved the provision of GMB service in a private housing development in Yuen Long; and
- (b) The requirement to use LPG light buses or models with similar or better emission standards in the route was the request of the developer concerned which supports green transport.

Nevertheless, since no bid was received for the tender conducted in March 2002, the developer subsequently agreed to also accept Euro III diesel light buses. The GMB routes were then re-tendered on this basis.

As regards the supply of light buses in Hong Kong, there are currently three brands of diesel light buses: Mitsubishi, Mercedes-Benz and Volkswagen; and two brands of LPG light buses: Toyota and Mercedes-Benz. Hence, there are different choices for light buses in the market.

As regards the scheme to grant financial assistance for the replacement of existing diesel light buses with LPG or electric ones, ETWB advised that Euro III emission standard is the minimum standard that all newly registered vehicles have to meet. Therefore, there is no justification for offering any incentive to owners for replacing their fleet with Euro III diesel light buses. LPG and electric light buses are environmentally cleaner than Euro III diesel counterpart. An LPG light bus emits almost zero particulates and only 50% of the nitrogen oxides of a Euro III diesel light bus while an electric light bus has zero emission.

Case 10: Operation of public light buses

The HK Public-Light Bus Owner & Driver Association was dissatisfied that its previous complaint about the prohibition of red minibus operation on certain routes was noted as unsubstantiated in the 2000-2001 COMPAG Report. It requested the setting up of a working group comprising representatives from the Administration, the Legislative Council and the trade to further examine the matter and the allowing red minibuses (RMBs) to enter, during non-peak hours, expressways, tunnels, bridges, housing estates and new development areas currently restricted for red minibus.

The Environment, Transport and Works Bureau (ETWB) advised that public light buses ("PLBs") perform a supplementary role in the public transport system in Hong Kong, serving areas where patronage does not justify the provision of high capacity modes of transport. Therefore the role and development of PLBs are subject to certain limitations in comparison with the mass carriers and the size of the PLB fleet has been frozen at 4,350 in the past years. RMBs are allowed to continue to operate within their existing service areas under suitable restrictions. The conversion of RMBs to GMBs is encouraged as the operation of GMBs is under the direct monitoring of TD which could better ensure the quality of service.

The Administration completed the review of the role and operation of PLBs in 2001 and reported the review findings to the Transport Panel of the Legislative Council in December 2001. The review concluded that in view of the substantial development of the public transport system in recent years, PLBs should continue to perform the function of supplementing the mass carriers, that the conversion of RMBs to GMBs should continue to be encouraged, and that the current restrictions for RMB operation should be maintained. Nevertheless, TD will consider any specific proposals put up by the trade on a case-by-case basis. Hence, there is no need to set up a working group as proposed by the Association.

Case 11: Alleged price collusion by approved engine emission test centres

The complaint was lodged by the Hong Kong Right Hand Drive Motors Association (the Association) to the Consumer Council (CC) in August 2001. It alleged that the four test centres which provided testing services on noise and engine emission levels in Hong Kong had price fixing agreement and jointly increased the testing fees from about \$3,000 to \$6,000 in August 2001.

The CC completed a study into this complaint. There are four approved engine emission test centres in Hong Kong. These test centres are approved by the Environmental Protection Department on the basis of technical capability and compliance with a Code of Practice issued by the Department, or an environmental testing certificate issued by an accredited agency such as the Vehicle Certification Agency of the United Kingdom.

The information provided by the complainant and the four test centres including the pricing history of the four centres indicated that there was a wide range of pricing in the market among the competitors. Moreover, the Association had indicated that it was able to negotiate a price for its members. Based on the above, the CC did not find any conclusive evidence of a price fixing agreement. Nevertheless, to address the complainant's concern about the absence of any means to prevent the test centres from agreeing on prices in the future, the Consumer Council would continue its efforts to encourage the trade to subscribe to its Benchmark Code of Practice, which contains clauses regarding anti-competitive practices.

Case 12: Alleged price fixing by operators of car parks under short-term tenancy in Kwai Tsing

In November 2002, some container truck drivers complained to the Lands Department that an operator of car park under short-term tenancy (STT) in Kwai Tsing attempted to monopolize the operation of such STT car parks in the district. This had resulted in higher parking charges. They also alleged that this operator, together with another STT car park operator in the district, each deliberately left one of their car parks vacant so as to reduce supply and to charge higher parking fees for the more popular car parks operated by them.

The Lands Department advised that these STT car parks were let by open tender in accordance with the normal land administration practice. At the time of the complaints, there were 24 STT car park sites operated by six different car park companies in the Kwai Tsing District. In addition, there were over 300 lorry parking spaces available in the district yet to be leased. In general, different fees were charged by different car park operators based on their own commercial and market considerations. There was no evidence of market monopoly. The two parking sites previously left vacant were at less central locations. They had been opened for business since late November 2002.

Having reviewed the existing practices, the Lands Department had adopted a number of additional measures to improve the control of STT car parks and to prevent any attempt by a STT car park operator to engage in anti-competitive practices. These measures included –

- (a) include conditions in future tenancy agreements requiring the car park company to commence operation of a car park and continue to do so throughout the tenancy at a scale satisfactory to the Lands Department, or else the tenancy may be cancelled;
- (b) split a site, if feasible, into two or more lots, and tender them simultaneously without letting any company operate in more than one of those lots;
- (c) keep a performance record of car park operators and consider such records when assessing their tenders for future STT car parks. Lands Department is not bound to accept the highest tender; and

- (d) monitor the parking needs of districts, in conjunction with the Transport Department, with a view to maintaining sufficient parking spaces to meet the demand.

Case 13: Tender conditions for procurement of medicine by Government Supplies Department and the Hospital Authority

A local medicine dealer complained that the existing tender conditions for procurement of medicine by Government Supplies Department (GSD) and the Hospital Authority (HA) were unfair and had prevented many medicine suppliers from participating in these tenders. As a result, the Government had been purchasing medicine at above market prices. This complaint is being considered.

Case 14 : Exclusivity arrangement in an Incentive Scheme Agreement for the Hong Kong Mortgage Corporation's Mortgage Insurance Program

The complainant sent a letter to the Secretary for Financial Services and the Treasury on 12 December 2002 drawing his attention to an exclusivity arrangement stipulated in an Incentive Scheme Agreement for the Hong Kong Mortgage Corporation's ("HKMC") Mortgage Insurance Program ("MIP"). The exclusivity arrangement required every bank joining the Incentive Scheme of the MIP to only use the HKMC as the exclusive provider of mortgage insurance. The complainant considered the exclusivity arrangement anti-competitive as it restricted banks' desire to pursue opportunities with other mortgage insurance providers in the private sector. It further alleged that the HKMC could be viewed as taking advantage of its status to "monopolize" the mortgage insurance market.

Having looked into the case of the exclusivity clause included in the relevant agreement for the Incentive Scheme, the Financial Services and the Treasury Bureau (FSTB) were of the view that the relevant clause was meant to be a risk mitigation measure rather than an anti-competitive device, and replied to the complainant accordingly on 29 January 2003. The FSTB found that -

- (a) It is entirely optional for banks to join or opt out from the Incentive Scheme, which would not affect their right to remain within the MIP. The exclusivity clause does not prohibit banks from entering into mortgage insurance arrangements with other service providers. The 12-month notice period is a risk mitigation measure designed to protect the HKMC and its reinsurers against the risk of banks imprudently underwriting a large number of MIP loans to qualify for the Incentive Scheme and then suddenly withdrawing from the Scheme. In short, the exclusivity clause does not require a bank to join, or prohibit it from leaving, the Incentive Scheme.
- (b) the purpose of the exclusivity clause is to guard against the risk of adverse selection, which could arise if a bank is allowed to engage other insurance providers at the same time, particularly if one of them is a close affiliate of the bank. This is that the bank may deliberately assign the more risky loans to the HKMC and the less risky loans to the insurance providers associated with itself to its own benefit;

- (c) as HKMC is required to operate on prudent commercial principles, we believe it is legitimate for it to take appropriate risk management measures to control its risk of business;

- (d) notwithstanding the above, the HKMC has recently provided a “let-out” to the exclusivity requirement. This would apply if the participating bank concerned can design a mechanism, to the satisfaction of the HKMC, that can ensure fair and equitable allocation of mortgage insurance applications amongst its insurers, including the HKMC, which would avoid the adverse selection of applications in favour of one insurer or prejudicial to the others. The HKMC has devised a computerized system for random allocation of MIP applications amongst its 4 reinsurers. This proposal should help address the concerns of market participants about the potential effect of the exclusivity clause on market accessibility and contestability.

5. Publicity and Training

Publicity

COMPAG attaches great importance to promoting competition and understanding of the Government's competition policy by the general public and the international communities.

The COMPAG annual reports used to be the means to disseminate competition-related information to the community. Hard copies of the COMPAG annual reports were distributed to the Legislative Council, District Councils, chambers of commerce and trade associations, consular and the Government's overseas offices, tertiary institutions, and made available to the general public at the various Public Enquiry Service Centres of the Home Affairs Department.

Since October 2002, with the launch of the COMPAG website (www.compag.gov.hk), members of the public and interested parties overseas are provided with access to information through the Internet on the Government's work in promoting competition. Relevant reference materials such as the Statement on Competition Policy and the annual reports of COMPAG are available on the website, through which the public may also file a competition-related complaint. With the launch of the COMPAG website and in tandem with the Government's initiatives to promote e-Government, COMPAG will henceforth cease the printing and distribution of hard copies of the COMPAG annual reports.

In a continuing effort to nurture a pro-competition culture in the community, COMPAG has been working on a publicity programme to promote competition concepts in schools and among the youth. Work in this area will be taken forward in 2003-04.

Training

Bureaux and departments have the responsibility to oversee market competition in their respective portfolio, initiate remedial measures on anti-competitive conduct, and promote competition in the respective sectors. COMPAG is aware that public officers need to be apprised and reminded of the basic concepts and principles of the Government's competition policy. In this regard, COMPAG has developed a booklet in collaboration with the Civil Service Training and Development Institute, to present the key ideas of the Government's competition policy in thirteen frequently asked questions as a handy reference.

Over the year, officers from relevant bureaux and departments attended seminars and workshops organized by the World Trade Organization and the Asia Pacific Economic Co-operation to share with the international community Hong Kong's experience in promoting competition.

6. Developments in the International Scene

Interactions between trade and competition policies continued to attract discussions in major international fora such as the World Trade Organization (WTO) and the Asia Pacific Economic Co-operation (APEC).

On the WTO front, as agreed at the fourth WTO Ministerial Conference (MC) held in Doha in November 2001, negotiations on trade and competition would take place after the fifth MC to be held in late 2003 on the basis of a decision to be taken, by explicit consensus, at that MC on the modalities of negotiations. As mandated by the Doha Ministerial Declaration, over the year, the Working Group on the Interaction between Trade and Competition Policy (WGTCP) focused its work on the clarification of the various elements of a possible multilateral framework on trade and competition policy (MFC). Discussions thus far revealed divergent views among WTO Members on the possible MFC. The proponents continued to argue strongly for a binding competition agreement. This notwithstanding, a number of Members had expressed concerns about the need to have and the possible obligations associated with a legally binding MFC. “Hong Kong, China” participated actively in these discussions, emphasizing the need to respect different approaches adopted by different Members in promoting competition and the importance of accommodating the wide-ranging needs and interests of Members.

The latest WTO Trade Policy Review on Hong Kong, China was completed in December 2002. Competition policy was one of the areas that had attracted discussions. WTO members noted in their statement after the review that Hong Kong has a very competitive market, that Hong Kong’s competition policy is “a text book case of the market economy at work”, and that an all embracing competition law might not be required in certain circumstances.

On the APEC front, the Competition Policy and Deregulation Group continues to promote dialogue, information exchange and experience sharing among APEC economies. Five seminars/workshops were held in 2002 to provide opportunities for Members to exchange views and build capacity in competition policy and deregulation issues. “Hong Kong, China” participated actively in these seminars/workshops, as well as similar seminars/workshops organized by the WTO, to share with the international community its experience that an open

market policy, reinforced by sector-specific measures, is effective in promoting competition.

Annex I

Competition Policy Advisory Group Terms of Reference and Membership

COMPAG was set up under the chairmanship of the Financial Secretary in December 1997 to review competition issues that have substantial policy or systemic implications. Its terms of reference and membership are set out below -

Terms of Reference

- (a) To agree and promulgate a policy statement on the promotion of competition in Hong Kong.
- (b) To identify areas in the economy, particularly within the existing government framework, that may not be fully compatible with the promotion of competition and economic efficiency, and review scope for refinement.
- (c) To consider and review initiatives from bureaux and departments, or others as appropriate, on how to promote competition in Hong Kong.
- (d) To consider competition-related matters which may have a bearing on government policy

Membership

- Chairman – Financial Secretary
- Members – Secretary for Commerce, Industry and Technology
- Secretary for Financial Services and the Treasury
- Secretary for Economic Development and Labour
- Permanent Secretary for Commerce, Industry and Technology (Commerce and Industry)
- Permanent Secretary for Finance Services and the Treasury (Treasury)
- Permanent Secretary for Economic Development and Labour (Economic Development)
- Director – General of Trade and Industry
- Government Economist
- Consumer Council
- Secretary – Principal Assistant Secretary for Economic Development and Labour (Economic Development)
- Observers – On a need basis

Annex II

Statement on Competition Policy

Introduction

1. This Statement sets out the objective of the Government of the Hong Kong Special Administrative Region's competition policy and offers some specific pointers to facilitate compliance with the policy.

Objective

2. The objective of the Government's competition policy is to enhance economic efficiency and free flow of trade, thereby also benefiting consumer welfare. The Government is committed to competition as a means to achieving the said objective, and not as an end in itself.
3. The Government considers competition is best nurtured and sustained by allowing the free play of market forces and keeping intervention to the minimum. We will not interfere with market forces simply on the basis of the number of operators, scale of operations, or normal commercial constraints faced by new entrants. We will take action only when market imperfections or distortions limit market accessibility or market contestability, and impair economic efficiency or free trade, to the detriment of the overall interest of Hong Kong. We will strike the right balance between competition policy considerations on the one hand, and other policy considerations such as prudential supervision, service reliability, social service commitments, safety, etc., on the other.

Pro-competition Principles

4. All government entities, and public- and private-sector bodies are encouraged to adhere to the following pro-competition principles for the purpose of enhancing economic efficiency and free trade -
 - a. maximizing reliance on, and minimizing interference with, market mechanism;
 - b. maintaining a level-playing field;
 - c. minimizing uncertainty and fostering confidence in system fairness and predictability by -
 - i. consistent application of policies;
 - ii. transparent and accountable operations; and
 - iii. adherence to equitable and non-discriminatory standards and practices.

Restrictive Practices

5. The Government recognizes that not all practices that limit market accessibility or contestability impair economic efficiency or free trade. Only those that do, and are not in the overall interest of Hong Kong, should be attended to. The determination of whether a practice is restrictive, detrimental to economic efficiency or free trade, and against the overall interest of Hong Kong must be made in the light of the actual situation. The intended purpose and effects of the practice in question, and the relevant market or economic conditions, etc., must all be taken into account.

6. As each practice must be examined on its own, it is difficult and misleading to generalize. For illustrative purpose only, some business practices which may warrant more thorough examination are set out below -
- a. price-fixing* intended to distort the normal operation of the market, increase the cost for purchasers, and have the effect of impairing economic efficiency or free trade;
 - b. bid-rigging*, market allocation*, sales and production quotas* intended to distort the normal operation of the market, increase the cost for and reduce the choice and availability to purchasers, and have the effect of impairing economic efficiency or free trade;
 - c. joint boycotts* intended to distort the normal operation of the market, deprive supply or choice to the targets of the boycott, and have the effect of impairing economic efficiency or free trade; and
 - d. unfair or discriminatory standards* among members of a trade or professional body intended to deny newcomers a chance to enter or contest in the market, and have the effect of impairing economic efficiency or free trade.

* These are various forms of horizontal restraints among competitors typically for the purpose of raising or fixing prices (so-called "price-fixing"), compressing bid prices ("bid-rigging"), allocating specific customers or sales territories to particular firms and not competing over the territory or customers of other firms ("market allocation"), setting quotas on the supply of certain goods or services in order to push prices up ("sales and production quotas"), and not dealing with firms that supply other firms in their market ("collective boycotts").

7. The Government further recognizes that scale of operation or share of the market per se does not determine whether a business is anti-competitive or not. The determining factor is whether a business, through abusing its dominant market position, is limiting market accessibility and contestability and giving rise to economic inefficiency or obstruction of free trade to the detriment of the overall interest of Hong Kong. Each case has to be examined on its own. For illustrative purpose only, some examples that may involve an abuse of market position are set out below-
 - a. predatory behaviour such as selling below cost for the purpose of driving out competition followed by substantial price increases in an area of economic activity where there are constraints to market accessibility and contestability;
 - b. setting retail price minimums for products or services where there are no ready substitutes; and
 - c. conditioning the supply of specified products or services to the purchase of other specified products or services or to the acceptance of certain restrictions other than to achieve assurance of quality, safety, adequate service or other justified purposes.

Approach

8. There is no international standard or consensus on what is the best approach to achieve competition in order to enhance economic efficiency and free flow of trade. Some economies have competition laws which differ widely in scope of control, enforcement mechanisms and remedies available. Other economies shun the legislative route. The choice is heavily influenced by the characteristics, development history and socio-economic background of an economy.

9. For Hong Kong, a small and externally-oriented economy which is already highly competitive, the Government sees no need to enact an all-embracing competition law. To maintain overall consistency in the application of the competition policy, we provide a comprehensive, transparent and over-arching competition policy framework through this Policy Statement and reinforce this with sector-specific measures not limited to laws.

10. In the Hong Kong environment, the Government is promoting economic efficiency and free trade through competition by -
 - a. raising public awareness of the importance of competition for the enhancement of economic efficiency and free trade;

 - b. identifying, on a sectoral basis, obstacles and constraints imposed by the Government and other public sector entities which limit market accessibility and contestability and compromise economic efficiency and free trade to the detriment of the overall interest of Hong Kong, and removing them through voluntary, administrative, legislative, etc., measures as appropriate;

 - c. initiating pro-competition measures, on a sectoral basis, in the Government and public sector through administrative, legislative, etc., measures as appropriate;

 - d. encouraging the private sector to embrace competition and its stated objective of enhancing economic efficiency and free trade through voluntary action;

 - e. supporting the Consumer Council's work in drawing up codes of practice that promote competition and its stated objective of enhancing economic efficiency and free trade;

- f. working together with the Consumer Council to encourage the private sector to adopt pro-competition measures, such as self-regulatory regimes that preserve and enhance free competition; and to monitor and review business practices in sectors prone to anti-competition behaviour;
- g. establishing a central repository of competition-related concerns and complaints to facilitate the identification of possible deficiencies and areas for improvement; and
- h. providing a dedicated forum under the Financial Secretary (already established and known as the Competition Policy Advisory Group or "COMPAG" in short) to review policy issues related to competition.

Implementation

11. The Government is committed to pro-actively nurture and sustain competition for the purpose of enhancing economic efficiency and free trade. COMPAG will invite all government entities to adhere to the Statement, propose initiatives for furthering the policy objective, examine the impact of all new proposals on competition and, where appropriate, bring this to the attention of the Executive Council and the Legislature. They are also expected to ensure that all statutory bodies under their charge pay heed to the Statement as well.
12. The Government calls upon all businesses to cease existing, and refrain from introducing, restrictive practices that impair economic efficiency or free trade on a voluntary basis. Where justified, the Government will take administrative or legal steps as appropriate to remove such practices if necessary.

13. Alleged restrictive practices in the public and private sectors may be referred to the concerned policy bureau or government department for consideration. Separately, the COMPAG Secretariat will keep track of all referrals and bring these to the attention of COMPAG should there be substantial policy or systemic implications.

Competition Policy Advisory Group
May 1998