

競爭政策諮詢委員會工作報告

COMPAG

Competition Policy Advisory Group Report

2021

(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 consumers and the 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 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. The Government launched in November 2006 a public consultation on the introduction of a cross-sector competition law, and conducted in May 2008 a further public consultation on the detailed proposals for the 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 and became the Competition Ordinance (Cap. 619) (“the Ordinance”), which fully commenced operation on 14 December 2015.

Interface between Competition Authorities and COMPAG upon Commencement of the Competition Ordinance

6. The Ordinance provides a legal framework that prohibits and deters undertakings¹ in different sectors from engaging in conduct which has the object or effect of preventing, restricting or distorting competition in Hong Kong.

7. The Ordinance is enforced by two independent statutory authorities, i.e. the Competition Commission (“the Commission”), and the Communications Authority which has concurrent jurisdiction with the Commission where the broadcasting and telecommunications sectors are concerned. Complaints on anti-competitive conduct relating to the Ordinance are handled by the two authorities.

8. 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 by the Chief Executive in Council (“CE-in-C”) on agreements, conduct and mergers exempted by CE-in-C under the Ordinance².

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.

² Under the Ordinance, CE-in-C may exempt agreements, conduct and mergers from the application of certain provisions of the Ordinance on public policy grounds or to avoid conflict with international obligations, subject to conditions or limitations that the CE-in-C considers appropriate.

2. Work of COMPAG in 2021

9. In 2021, COMPAG handled 23 cases with details as follows –

(A) Cases concerning Government Policies and Practices

Cases 1-3: Complaints about the Transport Department favouring franchised buses over non-franchised buses (cases closed)

10. There are three cases involving allegations that the Transport Department (“TD”) favoured franchised buses over non-franchised buses (“NFB”) providing residents’ services.

11. In the first case, the complainant alleged that TD had rejected an application from a NFB operator to increase the frequency of its services as a result of the introduction of a new franchised bus route. COMPAG noted that TD had rejected the application from the NFB operator concerned as an on-site survey showed that its services still had spare capacity. Subsequently, the concerned NFB operator informed TD of the cessation of its services.

12. In the second case, the complainant alleged that TD had cancelled certain inter-peak departures of a NFB route as a result of the introduction of two new franchised bus routes. COMPAG noted that TD’s cancellation was due to the low patronage of the NFB route concerned and the availability of new franchised bus routes as alternatives. However, TD’s subsequent review found that the patronage of the alternative franchised bus services remained low, which showed that passengers displaced from the NFB route did not take franchised buses as a result, but possibly other private modes of transport. In view of strong local requests, TD subsequently approved the resumption of the inter-peak departures of the NFB route in question.

13. As the matters under complaint in the two cases had been overtaken by subsequent developments, no further follow-up by COMPAG was necessary.

14. In the third case, the complainant alleged that TD had replaced a NFB residents’ service with a franchised bus service without consulting the relevant residential estate. However, the anonymous complaint contained no details on the franchised bus and NFB routes nor the residential estate in question.

15. As the information provided in the complaint is vague to the extent that a meaningful investigation could not be conducted, COMPAG decided that no investigation be undertaken.

Case 4: Complaint about exclusive rights of a developer to provide transportation services for a residential development (case closed)

16. The complainant alleged that the developer of a residential development had been granted exclusive rights to provide certain transportation services to residents concerned. The complainant considered that the arrangement might give rise to competition concerns as other service providers were unable to compete for the provision of the services concerned.

17. The Transport and Housing Bureau (“THB”) has provided information about the case. COMPAG noted that the arrangement in question imposed an obligation, rather than a right or a privilege, on the developer so as to ensure the provision of viable transportation services for residents concerned. COMPAG considered that the arrangement should not be viewed in isolation as it was part and parcel of the residential development project concerned. Also, the services had been operating at a loss for over a decade as the fares had been on the low side.

18. As the case contained no clear and identifiable subject matter directly relating to competition, COMPAG decided that no investigation be undertaken.

Case 5: Complaint about the quotation exercise for flooring services for the Hong Kong Science Museum (case closed)

19. The complainant alleged that an existing contractor had provided to the Leisure and Cultural Services Department (“LCSD”) a carpet sample, which was subsequently adopted by LCSD as a requirement in a quotation exercise for flooring services for the Hong Kong Science Museum, and that the existing contractor enjoyed exclusive discounts from the sole supplier of the carpet brand in question.

20. LCSD has provided information about the case. COMPAG noted from the relevant quotation documents that service providers were allowed to supply carpets of alternative brands so long as they fully conformed with the technical requirements, which were objective criteria (such as tile size and thickness). COMPAG also noted that the Hong Kong Science Museum had followed LCSD’s internal guidelines in awarding the contract in question to the lowest conforming bidder.

21. As the case contained no clear and identifiable subject matter relating directly to competition, COMPAG decided that no investigation be undertaken.

Case 6: Complaint about the Electrical and Mechanical Services Department's extension of a maintenance and installation contract (case closed)

22. The complainant alleged that the Electrical and Mechanical Services Department ("EMSD") had extended a maintenance and installation contract with the existing contractor without conducting an open tender, and that there was a change in the contract sum during the extended contract period.

23. EMSD has provided information about the case. COMPAG noted that extension of the contract period was necessary to maintain the services concerned for ten months before the department could adopt a new edition of engineering contract. COMPAG also noted that the extension was made in accordance with the Government's Stores and Procurement Regulations and there was no change in the rates of the extended contract.

24. As the case contained no clear and identifiable subject matter relating directly to competition, COMPAG decided that no investigation be undertaken.

Case 7: Complaint about the Drainage Services Department's "quota system" for sewage disposal (case closed)

25. The complainant alleged that the Drainage Services Department ("DSD") had rejected without reasons his tanker company's application for a larger "quota" for disposal of sewage at a designated sewage treatment facility, and that DSD had not allowed new companies joining the sewage transportation industry to submit "quota" applications.

26. DSD advised that upon completion of a review and consultation with the industry, it had re-diverted certain sewage disposal activities and freed up further capacity of the treatment facility in question. The "quota system" had therefore been ceased, and tanker companies may dispose of sewage at the facility without any restriction in volume.

27. As the matter under complaint had been overtaken by subsequent developments, no further follow-up by COMPAG was necessary.

Cases 8-9: Complaints about TD's issuance of licences for NFBs to provide residents' services and student services (under processing)

28. There are two cases concerning respectively the provision of residents' services and student services by NFB.

29. In the first case, the complainant was concerned about reduction in the number of operators providing residents' services for a residential development, alleging that TD's refusal to issue new Passenger Service Licences ("PSLs") had exacerbated the problem of oligopoly in the market.

30. In the second case, the complainant was concerned about the limited number of PSLs issued by TD for student services, resulting in the market being almost dominated by a certain operator.

31. THB has conducted an investigation into the cases, which will be considered by COMPAG.

Case 10: Complaint about the monopolisation of the training market for the Mandatory Competence Test of the Motorcycle Driving Test as a result of TD and the Lands Department's tendering of designated driving school sites (under processing)

32. The complainant alleged that a particular company and its subsidiaries had monopolised the market for providing training for the Mandatory Competence Test ("MCT") of the Motorcycle Driving Test, as a result of TD and the Lands Department ("LandsD")'s decision to award the tenancies of all designated driving school sites to that company or its subsidiaries. The complainant also alleged that the company had since then engaged in certain malpractices in relation to the MCT training.

33. THB has provided information about the case, which will be considered by COMPAG. For the part of the complaint involving the company's alleged malpractices, the COMPAG Secretariat has referred the matter to the Commission for consideration.

Case 11: Complaint about the booking of diving pools managed by LCSD (under processing)

34. The complainant alleged that LCSD had rejected his organisation's application for using LCSD's diving pool given that it could not produce a valid diving instructor certificate issued or recognised by the Hong Kong Underwater Association. The complainant considered LCSD's arrangement unfair to diving instructors not recognised by the Association.

35. The Home Affairs Bureau has conducted an investigation into the case, which will be considered by COMPAG.

Case 12: Complaint about the Environmental Protection Department's measures regarding treatment and recycling of waste electrical and electronic equipment (under processing)

36. The complainant alleged that the Environmental Protection Department ("EPD") had been providing special subsidies to a waste treatment company, but not other companies or individuals in the same recycling trade in Hong Kong. The complainant opined that such an arrangement was unfair, and that EPD should either cease the special subsidies for the company or grant the same to all market players in the trade.

37. The COMPAG Secretariat has sought from EPD information about the case, which will be considered by COMPAG.

Case 13: Complaint about Architectural Services Department's requirement in the use of tactile warning markers (under processing)

38. The complainant alleged that although there were three types of tactile warning markers which could be used in barrier-free facilities in Hong Kong, the Architectural Services Department ("ArchSD") designated one particular type of tactile warning marker for use in all of its projects. The complainant further alleged that since there was only one supplier which could meet the specifications of that particular type of tactile warning marker, he was forced to purchase the product from the sole supplier in order to take on ArchSD's projects.

39. The COMPAG Secretariat has sought from ArchSD information about the case, which will be considered by COMPAG.

Case 14: Complaint about EPD's "EV-Charging at Home Subsidy Scheme" (under processing)

40. The complainant alleged that EPD had guided Owners' Corporations and property management companies of private residential buildings to shortlist 14 firms on ArchSD's consultants list for taking forward installation works under the "EV-charging at Home Subsidy Scheme". The complainant considered the arrangement unfair.

41. The COMPAG Secretariat has sought from EPD information about the case, which will be considered by COMPAG.

Case 15: Complaint about EPD's tendering arrangements relating to recycling (under processing)

42. The complainant alleged that EPD had awarded the contracts for the management of recycling bins in all four geographical regions in Hong Kong to a single company. Secondly, he alleged that EPD had allowed the system operator of gift redemption machines of recyclables to submit quotations for supplying the machines, and had also delayed the procurement process due to technical problems. The complainant considered EPD's arrangements unfair and unreasonable.

43. The COMPAG Secretariat has sought from EPD information about the case, which will be considered by COMPAG.

Case 16: Complaint about the Food and Environmental Hygiene Department's engagement of advisor for a public toilet design thinking programme (under processing)

44. The complainant alleged that a non-governmental organisation, with the Government as its largest source of funding, had "won" a contract for providing public toilet design consultancy services to the Food and Environmental Hygiene Department ("FEHD"). The complainant claimed that due to the availability of government subsidy/funding for the organisation, it was able to offer below-market rates to bid for the contract and had thus competed unfairly with private firms.

45. The COMPAG Secretariat has sought from FEHD and the Communications and Creative Industries Branch of the Commerce and Economic Development Bureau information about the case, which will be considered by COMPAG.

Case 17: Complaint about FEHD's requirement on installation of memorial plaques in public columbaria (under processing)

46. The complainant alleged that FEHD required successful niche applicants to engage only FEHD-registered contractors for installing memorial plaques in public columbaria, and that the quotations obtained from various contractors had increased drastically within a short period of time. The complainant considered that FEHD's requirement could result in price-fixing amongst contractors.

47. The COMPAG Secretariat has sought from FEHD information about the case, which will be considered by COMPAG.

Case 18: Complaint about the Government Logistics Department's Purchasing Card Programme (under processing)

48. The complainant alleged that while the Government Logistics Department ("GLD") had engaged two service providers to operate the Purchasing Card Programme, the two service providers eventually engaged the same subcontractor to perform merchant-related services after one subcontractor had ceased its business in Hong Kong. The complainant considered the subcontractor's services unsatisfactory and that GLD should engage more service providers to enhance competition.

49. The COMPAG Secretariat has sought from GLD information about the case, which will be considered by COMPAG.

Case 19: Complaint about LandsD's prolonged renewal of a Short Term Tenancy site (under processing)

50. The complainant alleged that LandsD had continuously renewed the Short Term Tenancy of a dangerous goods storage site, hence depriving the right of other market players to use the site.

51. The COMPAG Secretariat has sought from LandsD information about the case, which will be considered by COMPAG.

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

Cases 20-21: Complaints about Airport Authority Hong Kong's tendering arrangements (cases closed)

52. There are two complaints concerning Airport Authority Hong Kong ("AA")'s arrangements in tendering/quotation exercises.

53. In the first case, the complainant alleged that AA had repeatedly amended the tender requirements and deadlines for submission of tenders for the provision of certain ferry services, and that AA had not published the winning tender prices.

54. THB has provided information about the case. COMPAG noted that while AA had amended the tender requirements and submission deadlines of the tender exercises concerned, all tenderers were informed of the changes such that all of them had access to the same information and at the same time. As regards the non-disclosure of the winning tender prices, COMPAG noted that AA had acted in accordance with Hong Kong, China's commitments under the World Trade Organization's Agreement on Government Procurement.

55. In the second case concerning a quotation exercise conducted by AA for information technology-related maintenance and support services, the complainant alleged that AA had requested he/she to provide a budgetary quotation before formal invitation to tender, and that the arrangement could be susceptible to bid-rigging as the price information could be shared inappropriately with other bidders.

56. THB has provided information about the case. COMPAG noted that conducting market research was allowed and indeed encouraged in the procurement process of the public sector, and that AA's procurement process had incorporated the concept of market research through seeking budgetary quotations. COMPAG also noted that AA staff are required to uphold confidentiality of all price information obtained during the market research and quotation processes.

57. As the two cases contained no clear and identifiable subject matter relating directly to competition, COMPAG decided that no investigation be undertaken.

Case 22: Complaint about AA's restriction on the provision of in-flight catering services for private jets (under processing)

58. The complainant alleged that AA only allowed three approved catering companies to provide in-flight catering services to private jets and access the Hong Kong Business Aviation Centre ("HKBAC") where private jets were parked and serviced, and that other caterers could not access nor make deliveries to HKBAC, whether landside or airside. The complainant considered that AA's restriction had denied smaller caterers from entering the private jet catering market.

59. THB has conducted an investigation into the case, which will be considered by COMPAG.

Case 23: Complaint about the Hong Kong Science and Technology Parks Corporation's lease of land to data centre operators (under processing)

60. The complainant alleged that the Hong Kong Science and Technology Parks Corporation had leased land to data centre operators at a rental level far below market rates, failed to enforce the lease restrictions which prohibited data centre operator lessees from subletting the leased premises, and allowed transfer of ownership of data centre operator lessees to third-party providers. The complainant considered that these would give undue advantages to existing data centre operator lessees and distort competition in the industry.

61. The COMPAG Secretariat has sought from the Innovation and Technology Bureau ("ITB") information about the case. According to ITB, the matters under complaint are subject to an on-going judicial review ("JR"). After the JR case is concluded, ITB will provide information on the case to COMPAG for consideration.

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