

**Competition Policy
Advisory Group Report**

2000–2001

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1 Introduction

- 1.1 This report sets out the work carried out by the Government to promote competition since the publication of the *Competition Policy Advisory Group (COMPAG) Report 1999-2000* in April 2000. It covers -
- (a) new initiatives proposed by bureaux and departments to promote competition;
 - (b) progress of initiatives reported in COMPAG Reports 1998 and 1999-2000;
 - (c) competition-related complaints reported to COMPAG, and the outcome of previous cases;
 - (d) collaboration with the Consumer Council; and
 - (e) trends and developments on competition issues in the international scene.

Background

- 1.2 The Government is fully committed to the promotion of competition. The objective of the Government's competition policy is to enhance economic efficiency and free flow of trade, thereby also benefiting consumer welfare.
- 1.3 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 in *Annex I*. In May 1998, COMPAG promulgated the Statement on Competition Policy ("Policy Statement" and a copy of which is at *Annex II*) which offers some specific pointers to facilitate compliance with the competition policy by both the public and private sectors. All bureaux and departments are responsible for overseeing competition issues

within their portfolio in accordance with the Policy Statement. Where necessary, the Government will promptly take sector-specific measures, including licensing conditions, codes of practice, and legislation to rectify anti-competitive behaviours and to promote competition.

- 1.4 In 2000-01, COMPAG focused on the following areas of work:
- (a) encouraging new initiatives to promote competition;
 - (b) identifying areas that may not be fully compatible with the competition policy, and reviewing scope for refinement;
 - (c) keeping under review the various competition-related issues examined in 1999 and early 2000;
 - (d) keeping track of competition-related cases or complaints received from different sources, and reviewing, on a need basis, those cases which have policy or systemic implications; and
 - (e) monitoring discussions in international fora on competition issues that may have a bearing on Hong Kong.
- 1.5 As from July 2000, following the reorganisation of the former Trade and Industry Bureau, the secretariat of COMPAG has been transferred to the Economic Services Bureau.

2 New Initiatives to Promote Competition

- 2.1 In 2000-01, COMPAG again sought returns from bureaux and departments on new initiatives to promote competition. Their returns are summarised below -

Broadcasting

(1) Digital Terrestrial Broadcasting

The number of terrestrial television and radio channels is limited by spectrum constraint and the existing analogue transmission technology. Digital Terrestrial Broadcasting will increase the number of programme channels to facilitate competition and offer more choices for consumers. With the successful completion of the technical trials on digital broadcasting and having regard to the findings of two consultancy studies, the Information Technology and Broadcasting Bureau (ITBB) formulated policy proposals on digital terrestrial broadcasting which are set out in a public consultation paper issued on 1 December 2000.

The consultation ended on 28 February 2001, with a total of 23 submissions received. ITBB is examining the submissions in detail and will take full account of the submissions in formulating the policy framework for digital broadcasting services in Hong Kong.

(2) Broadcasting Satellite Services

Following the 1998 review of Television Policy, a policy decision was made to introduce broadcasting satellite services (BSS) in Hong Kong. In June 2000, the Government issued a licence under the Telecommunications Ordinance for the launching and operation of a satellite carrying four BSS transponders. The satellite is scheduled to be launched in mid-2002. The launch of BSS will provide an additional transmission platform for

broadcasters. ITBB intends to issue a guidance note within this year for those interested in leasing the BSS transponders for the provision of BSS.

Telecommunications

(3) Strengthening of the Pro-competition Regime of the Telecommunications Sector

The Telecommunications (Amendment) Ordinance 2000, enacted on 16 June 2000, strengthens competition safeguards regarding anti-competitive practices, abuse of dominant position, misleading or deceptive conduct and non-discrimination.

In deciding whether there is an anti-competitive behaviour or abuse of a dominant position in certain sectors of the market, the Telecommunications Authority (TA) will make an assessment of market conditions such as market share, ability to impose price changes without regard to competitors, barriers to entry, etc., which may involve wider economic issues. The Telecommunications (Amendment) Ordinance 2000 therefore also strengthens competition safeguards by providing for the establishment of an appeal board to review the merits of TA's decisions, determinations and directions in relation to competition matters.

Legal Services

(4) Solicitors' Right of Audience in the Higher Courts

Barristers have unlimited right of audience in courts whereas solicitors' rights of audience are generally limited to the lower courts. The Law Society has proposed a relaxation of the monopoly of the barristers' right of audience in the higher courts. The Department of Justice will consult the Bar Association and the Law Society before deciding on the way forward.

Financial Services

(5) Retail Payment System

The Hong Kong Monetary Authority (HKMA) is conducting a comprehensive review of retail payment systems in Hong Kong. The review will examine the various channels through which retail payments are made and the likely future trends in their utilisation. It will assess, amongst other things the efficiency, pricing and costs, the degree of market access and level of competition in the provision of retail payment services; whether there are any competition-related deficiencies operating against the public interest; and the implications on efficiency and competition of any further moves towards standardisation, consolidation or sharing of facilities in the provision of retail payment services.

Miscellaneous

(6) Admission of Talents Scheme

Unlike foreign nationals, Mainland residents are normally not allowed entry into Hong Kong for employment in private firms. The Security Bureau implemented the Admission of Talents Scheme in December 1999 with a view to enhancing Hong Kong's competitiveness as a manufacturing or service centre, in particular in technology-based and high-value added activities by admitting talents, particularly those from the Mainland, for employment. Talents from the Mainland, not confined to any particular sectors are allowed entry quota-free as long as they meet the relevant admission criteria. As at the end of May 2001, 515 applications were received out of which 149 have been approved.

3 Progress of Initiatives Reported in *Competition Policy Advisory Group Reports 1998 and 1999-2000*

3.1 There were a number of initiatives reported in the *COMPAG Reports 1998 and 1999-2000*. The progress of these initiatives is set out below.

(1) Electricity supply

A consultancy study to establish whether additional interconnection between Hong Kong's two electricity supply companies and encouragement of competition in the electricity supply sector would be in the interests of consumers was completed in November 1999. Public comments were invited. After reviewing the public comments received, including those from the Consumer Council, the Economic Services Bureau (ESB) publicly stated that it would conduct further studies on increased interconnection. It also hopes to map out the broad direction for the electricity supply sector before the next interim review of the Scheme of Control Agreements scheduled for 2003.

To take forward further the issue of increased interconnection, a detailed Investigation Study on a number of planning, reliability and logistics issues and the timeframe required for the construction of additional interconnectors between the two power companies was commissioned by the Electrical and Mechanical Services Department (EMSD) in February 2001. At the same time, ESB and EMSD are examining market restructuring experience in other places with a view to identifying practicable options for the Hong Kong market in future.

(2) Gas Supply

ESB and EMSD are watching developments relating to the proposed liquefied natural gas terminal project at East Shenzhen. In the light of this project, they have started to identify for further

examination, issues relating to the broad institutional, infrastructural regulatory framework necessary for possible introduction of a natural gas-based common carrier system.

(3) Admission criteria for barristers

The Legal Practitioners (Amendment) Bill, with Committee Stage Amendments, was passed by the Legislative Council in June 2000 and becomes the Legal Practitioners (Amendment) Ordinance 2000 in relation to the practice of solicitors. The parts of the Ordinance pertaining to the removal of privileges conferred on barristers or advocates from the United Kingdom, Scotland and Ireland will come into operation on a day to be appointed by the Secretary for Justice. This shall not be earlier than 1 November 2001 to allow sufficient time for preparation of new examinations, rules and regulations for all applicants.

(4) Contracting out of insolvency work

The Official Receiver's Office started contracting out compulsory winding up cases with assets below \$200,000 in the year 2000-01. Firms meeting the pre-qualification criteria were allowed to participate in the tender exercise. For cases with assets above \$200,000, eligible firms continued to be allocated cases on a roster basis. Separately, the Government commissioned in March 2001 a consultancy study to review the role of the Official Receiver. The study will examine, among other things, the desirability of a two-tier licensing system for insolvency practitioners as proposed by the Law Reform Commission.

(5) Practices in the insurance industry

Since 1999, the Office of the Commissioner of Insurance (OCI) has included in its annual reports business statistics of individual insurers in addition to the aggregate figures. It has also released provisional statistics of the insurance industry as a whole on a quarterly basis commencing from the first quarter of 1999. At the

same time, the Insurance Authority (IA) has been reviewing from time to time, in consultation with the Hong Kong Federation of Insurers (HKFI), the *Code of Conduct for Insurers* issued by HKFI in March 1999. It has also undertaken to encourage representative bodies of the insurance industry to promote the public's awareness of their rights and obligations under insurance contracts.

To formalize the existing practice of disclosing individual insurers' statistics in the annual reports of the OCI, the Insurance Companies (Amendment) Ordinance 2000 was enacted and came into operation in June 2000. The Amendment Ordinance empowers the IA to disclose, in the public interests, statistics relating to individual insurers. To educate the public on the regulatory framework of insurance intermediaries in Hong Kong, the IA issued two educational publications for distribution to the public in August 2000, namely a leaflet entitled "Know the Insurance Agents and Brokers at Your Service" and an information booklet on "Insurance Intermediaries in Hong Kong". Television and radio commercials were also launched to reinforce the education campaign.

(6) Use of private sector services by the Housing Department

Following Housing Authority (HA)'s endorsement of the task force's recommendation to increase the involvement of the private sector in public housing estate management and maintenance services, a brand new list of Property Services Companies has been established on 31 March 2000. Currently 28 companies have been successfully admitted to the list.

Up to the present moment, three batches of Property Service Contract have been awarded. Subsequently seven Property Services Companies were appointed to take up the management of 24 estates with a total of more than 100,000 flats in October 2000, December 2000 and May 2001 respectively.

The progress of the phased service transfer programme will continue. The fourth batch of Property Services Contract for ten estates was put to tender in early May 2001.

(7) Entry qualifications for Authorised Persons under the Buildings Ordinance

The Buildings Department (BD) has completed at the end of 2000 a review of the existing system of Authorised Persons (APs) under the Buildings Ordinance. The existing system is intended to provide assurance for the safety, health and environmental standards of private buildings by allowing only persons possessing the relevant qualification, experience and competence to carry out the relevant duties under the Buildings Ordinance. As the primary objective of the AP registration system is to protect the general public, and not individual trade or profession, the Planning and Lands Bureau and BD consider that there is no question of unfair competition to maintain a high standard of entry qualifications for APs.

(8) Use of British Standards in the construction industry

The Works Bureau (WB) commissioned a consultancy study in November 1999 to formulate measures to set up a central construction standardisation body in Hong Kong to oversee and co-ordinate the development of construction standards. The main study was completed in July 2000. The consultant's findings and recommendations were presented to the Construction Industry Review Committee in September 2000. The Committee supported the setting up of the standardisation body. It further recommended that the setting up of such body should be led by the proposed industry co-ordinating body. The WB will offer support to the proposed industry co-ordinating body to take the matter forward.

(9) Selection of consultants for traffic assignments

In order to have a larger pool of prospective consultants to carry out the Government's traffic assignments, the Civil Engineering Department and the Transport Department (TD) are jointly establishing a series of Base District Traffic Models for use by all consultants interested in such traffic assignments. The project consultant completed the Models at the end of July 2000. These Models have been taken on board in two recent assignments.

(10) Private school

The Government approved in March 1999 a package of proposals to foster the development of a strong private school sector. New initiatives included the allocation of government-built school premises to school sponsoring bodies to operate Direct Subsidy Scheme (DSS) schools, provision of land grant at nominal premium and a capital grant for construction of school premises to facilitate the establishment of non-profit making private independent schools (PIS), and enhancing financial assistance to DSS schools.

In furtherance of these initiatives, the Education and Manpower Bureau (EMB) has since 1999 invited prospective school sponsors to apply for operation of DSS schools and PISs. A good number of applications were received. In the past two rounds of School Allocation Exercise, a total of nine Government-built school premises were allocated to school sponsors for the operation of DSS schools, and five sites were allocated for the construction and operation of PIS. Apart from these, two school sponsors have been allocated sites for the construction and operation of DSS schools in 2000. School sponsors allocated sites for the operation of PISs or DSS schools will receive a capital grant for the construction of the school premises.

Given the encouraging response received in the last two rounds of School Allocation Exercise and the generally positive reaction

from the education sector and the public to the initiative, Government-built school premises and/or sites for the development of DSS schools and PISs will continue to be allocated in future exercises.

In the current round of exercise, 24 Government-built school premises, one site for both aided school sponsors and DSS school sponsors to apply, eight Government-built secondary school premises for the operation of DSS senior secondary schools, and four sites for the development of PISs will be allocated. The outcome of this round of exercise will be available in May/June this year.

The EMB/Education Department are now reviewing the terms of DSS with a view to enabling DSS schools to provide better quality education and to facilitating existing aided schools to join DSS.

(11) Alcoholic strength restrictions in the sale of intoxicating liquors

The Customs and Excise Department will conduct consultation with the trade in the latter part of 2001 on the proposed legislative amendments to remove the requirement of minimum alcoholic strength on a number of Chinese intoxicating liquors, and to require clear labelling of alcoholic strength and ingredients on every liquor container.

(12) Rice Control Scheme

In consultation with the Rice Advisory Committee, the Trade and Industry Department is taking steps with a view to fully liberalising the rice trade by 2003. The level of rice reserve has been brought down from 40,000 tonnes in 2000 to the current 19,000 tonnes in phases. The registration criteria for rice importers have been relaxed, lowering the market entry requirements, and as a result the number of registered importers has increased from 40 in 2000 to 55 in 2001. As from 1 January 2001, the restrictions whereby a rice importer cannot also be a rice wholesaler and vice versa and

that registered importers can only sell rice by wholesale to registered wholesalers have been lifted.

(13) Off-street driving schools

The TD invited tenders for a new off-street driving school in Tsuen Wan in July 1999 and awarded the contract to a new operator in October 1999. The new driving school commenced operation in April 2000. TD will continue to monitor the market situation.

(14) Fuel supply

In response to the Consumer Council's Report on the state of competition in the motor gasoline, diesel and liquefied petroleum gas (LPG) markets, the ESB set up in January 2000 the Competition Subcommittee under the Energy Advisory Committee to provide a forum for more focused discussion on competition-related issues in the energy sector. In response to the recommendations of the Subcommittee, the Administration has taken a number of measures to facilitate new entrants to the fuel market. These include removing the requirement for bidders for petrol filling station (PFS) to possess a special import licence or adduce evidence of a guaranteed supply from a licensed oil supplier as from July 2000; putting up existing PFSs for open tender upon expiry of current leases, instead of renewing existing leases; identifying more sites for PFS; and adopting a flexible approach in handling applications for the change of land use to set up PFSs, subject to compliance with relevant regulatory requirements including those relating to safety, planning standards and the environment.

(15) Use of central LPG in public housing estates

The Housing Department (HD), in conjunction with other bureaux and departments, has looked into the feasibility of providing central LPG in public housing estates. It is noted that

doing so may entail potential loss of substantial amount of land for flat production, impact on land requirement and planning flexibility, complicate design and lead to a longer development lead time because of the need to accommodate LPG storage compounds. It would also be difficult to identify suitable sites for common LPG storage facilities in a district given the environmental and safety concerns. In view of the above difficulties, the HA and HD would continue their present practice on gas supply and would only invite tender for the exclusive right to supply LPG to public housing developments in comparatively remote areas where towngas is not available. However, where practical and appropriate, efforts would be made to introduce more competition in gas supply to housing estate development.

(16) New sites for auto LPG filling stations

The Government tendered five sites in December 1999 for development as dedicated auto LPG filling stations at nil land premium on condition that auto LPG would be sold in accordance with a pricing formula made up of the international LPG price and an operating cost factor, the latter of which is bid by the tenderers. This initiative aims to facilitate the implementation of the programme to replace existing diesel taxis with LPG ones as part of the Government's clean air programme. At the same time, it encourages competition in the auto LPG market by facilitating the entry of potential new-comers. The retail price of auto LPG charged by the dedicated auto LPG filling stations sets a benchmark for other suppliers of auto LPG and helps keep the overall price at a competitive level.

(17) External Telecommunications Services and Facilities

In April 2000, the Telecommunications Authority (TA) issued a new invitation for applications for licences to operate external telecommunications facilities based on satellites or investment in new submarine/overland cables. So far, there have been 16 and 18

successful applicants for satellite-based operation and cable-based operation respectively. In line with the policy decision to progressively liberalise the telecommunications market, we would issue licences for the operation of external telecommunications facilities with effect from 1 January 2003, based on submarine or over land cables to those who have acquired capacity through the purchase of right to use the cables.

(18) Third Generation Mobile Services

The TA conducted two rounds of consultation in March and October 2000 on the licensing and regulatory framework of third generation (3G) mobile services. It has also conducted an industry workshop on the open network requirement in January 2001. Having considered the views received and the policy objectives of the licensing exercise, the Government announced the licensing and regulatory framework in February 2001.

Under the announced framework, the Government decided to adopt a hybrid method to issue four 3G licences. There will be a pre-qualification process to ensure the quality of the 3G networks built, and a spectrum auctioning exercise to ensure that the spectrum is allocated fairly and efficiently. Spectrum auctioning will be conducted on the basis of a royalty percentage bidding subject to minimum guaranteed payment. This auctioning method will best promote entry to the 3G market by alleviating the financial burden of operators. Successful 3G licensees will also be required to open up 30% of their 3G network capacity for use by non-affiliated Mobile Virtual Network Operators and content providers to provide a vibrant and competitive 3G market at both the content creation and service application levels.

The necessary legislation to provide the legal backing for the licensing exercise is being scrutinized by the Legislative Council. The TA aims to invite applications after the enactment of the legislation.

(19) Television services

In August 1999, the Information Technology and Broadcasting Bureau issued a guidance note to invite applications for the provision of new television services. Having carefully examined the applications received, the Government granted new domestic pay television programme service licences at the end of 2000, increasing the number of domestic pay TV operators in Hong Kong from two to five.

(20) Competition safeguards in the Broadcasting Bill

The Broadcasting Bill, containing competition provisions which prohibit a licensee from engaging in anti-competitive conduct and from abusing its dominant position in the television market, was passed by the Legislative Council in June 2000. To facilitate the industry in understanding the new competition provisions, the Broadcasting Authority (BA) issued for industry and public consultation two sets of draft competition guidelines indicating the manner in which the BA proposes to perform its statutory functions under the competition provisions. Upon conclusion of the consultation exercise, the BA promulgated the competition guidelines on 16 February 2001 and the competition provisions came into operation on the same date.

(21) One-building condition on foreign banks

The Hong Kong Monetary Authority (HKMA) relaxed the one-building condition on foreign banks in September 1999. Foreign banks are now allowed to operate up to a maximum of three branches. The restriction on the number of back and regional offices that a foreign bank can maintain has also been lifted. Further relaxation will be considered subject to a review in the first half of 2001.

(22) Interest Rate Rules

In July 1999, HKMA announced that the remaining interest rate rules (IRRs) would be deregulated in two phases, subject to a stable financial and economic environment. Phase one of the deregulation, covering 24-hour and up to six days' time deposits, took place on 3 July 2000. Phase two of the deregulation, covering current and savings accounts, has taken place as scheduled in July 2001. Once Phase two of the deregulation is implemented, interest rates on all types of deposits will be determined by competitive market forces.

(23) Stamp duty on stock transactions

To maintain the competitiveness of Hong Kong in the global financial marketplace, the Financial Secretary proposed in the 2000-01 budget to reduce the rate of stamp duty on stock transactions by 10% from the existing 0.25% to 0.225% per round transaction. The relevant legislative amendments came into effect on 7 April 2000.

(24) Level of brokerage for securities transaction

At present, a minimum brokerage commission of 0.25% of the value of transaction is charged to both the buyer and seller for all securities transactions. The Board of Hong Kong Exchanges and Clearing Limited passed a resolution on 17 May 2000 to remove the minimum brokerage commission rule with effect from 1 April 2002.

(25) Access of restricted licence banks to the Real Time Gross Settlement System

The legal arrangements for admission of Restricted Licence Banks (RLBs) into the Real Time Gross Settlement (RTGS) system were finalised in May 2000. RLBs with a clear business need can apply to the HKMA for access to the RTGS.

(26) Conveyancing services

Since August 2000, the Housing Society had agreed to allow all solicitors' firms, which satisfied their pre-qualification criteria, to provide conveyancing services for their housing schemes at charges negotiated between individual solicitors' firms and the beneficiaries.

(27) Estate duty on proceeds from life insurance policies

In the past, life insurance proceeds paid in Hong Kong were subject to estate duty, while those proceeds paid outside Hong Kong were exempted. The Financial Secretary proposed in the 1999-2000 budget to exempt all life insurance proceeds from estate duty irrespective of where they were paid. The relevant legislative amendments came into effect on 1 April 1999. This tax concession has helped to ensure a level playing field for all life insurers in Hong Kong, incorporated locally or elsewhere, as well as equal treatment to all life insurance policy holders and their beneficiaries.

(28) Voluntary Medical Insurance Scheme for Civil Servants

In April 2000, the Civil Service Bureau invited the insurance companies, which had been appointed as the carriers for the Voluntary Medical Insurance Scheme for Civil Servants, to submit proposals for the next term. The ten insurance companies with top ten gross premiums of medical insurance business in 1998 were also invited to submit proposals. The extended scope of invitation had facilitated and encouraged competition. In June 2000, the three existing and three interested insurance companies (as compared to three existing insurance companies in 1999) made a presentation to the Working Group under the Standing Committee on Medical and Dental Facilities (SCMDF). The Working Group subsequently made recommendations to appoint the three existing companies and a new one to the SCMDF for endorsement. All four carriers were appointed for a one-year term

with effect from 1 July 2000. The Working Group will reconvene in May 2001 to consider whether they should be re-appointed for another year.

(29) Use of new materials in works projects

In June 2000, the Architectural Services Department (Arch SD) completed a review of the arrangement of using new materials "on probation" for its works projects, instead of the previous arrangement which only allowed for the use of materials "deemed suitable". Arch SD will continue to investigate and expand the list of new materials for use in its projects.

(30) Release of motor maintenance manuals by vehicle manufacturers

In response to the request of the Working Group on Vehicle Maintenance Standards (comprising representatives of the Transport Bureau (TB), the Environment and Food Bureau and relevant departments), the Hong Kong Motor Traders Association agreed to release information on the emission system of Pre-Euro diesel vehicle and the trade considered the information to be adequate in meeting their needs and was satisfied with the arrangement. As for maintenance information on petrol and Euro diesel vehicles, TB's research indicates that third-party publications covering different aspects of almost all running models of vehicles, e.g. ignition systems, braking system, carburetor and fuel injection systems, electric and air conditioning systems, are readily available in Hong Kong.

The Hong Kong Institute of Vocational Education (HKIVE) has also established the Automotive Engineering Database Centre in late 2000. Technical data for petrol and diesel vehicles available there can be used both for training purpose as well as for general reference of the vehicle maintenance trade in their daily operation. The HKIVE will continue to expand the database and

develop the Centre with a view to providing comprehensive technical support to the vehicle maintenance trade.

(31) Management of the public cargo working areas (PCWAs)

PCWAs are managed by the Marine Department (MD). In the past, berths were allocated to PCWA operators on a first-come-first-served basis. In 1997, MD introduced a programme of management reform to the PCWAs with a view to improving the efficiency and productivity of their operations. The first phase of the reform, completed in early 1998, succeeded in the allocation of berths in eight PCWAs to the operators for a period of three years through a tendering exercise. The second phase of the reform, completed in May 1999, rationalised the landside management and the fee structure. The third phase of the reform, completed in early 2001, further rationalised the berth size operations to improve their efficiency.

(32) Allocation of clinics in public housing estates

With effect from 1 January 2000, medical and dental clinics in public housing estates are let by open tender. The new arrangement has encouraged wider competition. The HA will review the new arrangement after two years of operation.

4 Tracking Competition-related Complaints

- 4.1 Apart from ensuring that bureaux and departments review regularly policy and practices against the Government's competition policy objectives, COMPAG also keeps track of competition-related complaints or allegations of restrictive practices in the public and private sectors. As a general rule, investigations into and follow up actions on the complaints are carried out by the relevant bureaux and departments. COMPAG will also give advice to bureaux and departments.
- 4.2 COMPAG's efforts in tracking competition-related complaints have been complemented by the work of the Consumer Council ("the Council"), whose Trade Practices Division is responsible for examining business practices which may prevent, restrict or distort competition with a view to tendering advice to the Government on measures to promote healthy competition. The Council keeps COMPAG informed of competition-related complaints it receives, liaises with the relevant bureaux and departments in handling the complaints, and, where necessary, refers recommendations having competition policy implications to COMPAG and the relevant bureaux and departments for consideration.
- 4.3 During the period from April 2000 to March 2001, a total of eight competition-related complaints were received by or referred to COMPAG by different parties, including bureaux and departments and the Council. COMPAG has examined all these complaints and the follow up measures taken by the concerned parties. It has also given advice to the relevant bureaux and departments. These complaints are summarised below.

Substantiated Complaint

(1) Increase in transaction fees for the Easy Pay System (EPS)

In April 2000, the Council received complaints from merchants against the increase in transaction fees for the EPS. On 10 August 2000, the Council issued the “*Report on Complaints against the Easy Pay System*”, and concluded that the increase in transaction fees was an instance of misuse of market power by the EPS operator, who did not face competitive pressure in the supply of debit card network services. The Council considered that there should be competition amongst debit card network members, and there was a need for greater transparency and accountability in the operation of the network. Separately, the Hong Kong Monetary Authority (HKMA) announced in August 2000 that it would shortly commence a comprehensive review of retail payment services in Hong Kong, in consultation with relevant interested parties, including the Council. COMPAG had requested the HKMA to report their findings to it in due course.

Unsubstantiated Complaints

(2) Uniform price increase by newspapers

On 18 October 2000, some 12 Chinese-language newspapers increased their prices by \$1. In the announcements published by individual newspapers, some had made references to the statement that the increase was a result of “*a common decision among members of the industry.*” The Council had received complaints about the uniform price increase. The COMPAG Secretariat had referred the matter to the Home Affairs Bureau (HAB) which had policy responsibility over newspaper registration. HAB considered that with 47 registered newspapers, there was keen competition in the industry. Though the price-setting amongst the newspapers concerned had increased the cost for consumers, they still had a

choice in terms of price (as price differentials continued to exist) and more importantly, in terms of contents (with each newspaper differing in coverage of particular types of news, editorial style and special columns).

(3) Exclusive dealing in the supply of karaoke music

On 6 November 2000, the Council referred to the COMPAG Secretariat its findings in respect of a complaint alleging that some hit songs, in the form of karaoke discs, were only available at a limited number of large-scale chain karaoke lounges. Having examined the case, the Council found that there was no clear justification for government intervention. The relevant considerations were - the tenuous nature of market boundaries for different types of karaoke operations; the market power of recording companies supplying karaoke discs to counter balance that of karaoke lounges; and the fact that recording companies were unlikely to adopt a strategy to increase the market power of certain karaoke lounges to the extent which would threaten the maximum distribution of their products.

(4) High rentals of motorcycle parking spaces in a private car park

On 8 November 2000, the Council referred to the COMPAG Secretariat its findings in respect of a complaint about the high rental charges for motorcycle parking spaces set by the private car park operator in a housing development under the Housing Authority’s Private Sector Participation Scheme. Having examined the issue, the Council found that other motorcycle parking spaces were available within a maximum of 15 minutes’ walking distance from the housing development. The Council concluded that there was no apparent distortion to competition as a consequence of either restrictive practices or government regulatory policies.

(5) Prohibition of red minibus operation on certain routes

In May 2000, the Hong Kong Public Light Buses Owners and Drivers Association complained to the Transport Bureau (TB) against the prohibition of red minibuses from operating in new towns and new housing estates and from using new expressways and trunk roads. It claimed that this was in contravention of fair competition. TB subsequently replied to the Association, explaining that public light buses played a supplementary role in the public transport network. On traffic management grounds, there was a need to regulate its operation. TB's current policy was to identify suitable routes for green minibus operation, and encourage the conversion of red minibuses to green minibuses. The banning of red minibuses from using new expressways and trunk roads would continue to be applied with flexibility, subject to traffic and transport situations.

(6) Franchised bus services

On 20 June 2000, a member of the public wrote to the Chairman of the Legislative Council Panel on Transport and with a copy to the COMPAG Secretariat, complaining about the lack of genuine competition in most franchised bus routes, as each bus route was operated by only one bus company. Having consulted TB on their current policy and reported the case to COMPAG in September 2000, the COMPAG Secretariat issued a reply to the complainant in October 2000, relaying TB's comments that a bus network had to be considered in its totality to facilitate route development and long term investment planning by bus operators, so as to ensure that socially desirable but unprofitable routes were adequately serviced. Against this background, it was not practicable to award new bus routes on an individual route basis.

No further competition-related follow up action was considered necessary

(7) Sales Practice of a Telecommunication Service Operator

In November 2000, the Telecommunications Authority (TA) received a complaint from one telecommunication service operator against the sales practices of another operator. Investigation revealed that the case was more related to misleading conduct, instead of anti-competition behaviour, and that it had subsequently been resolved by TA.

Complaint being considered

(8) Exchange rate adjustment mechanism adopted by shipping conferences

In October 2000, a company lodged a complaint with the Council about a "Yen Appreciation Surcharge" (YAS) imposed by a container liner company on cargo shipments from Japan to hedge against exchange rate risks. The complainant alleged that the imposition of the surcharge was the result of a cartel, and that the surcharge did not reflect contemporary movements in the exchange rate. In response to the Council's enquiry, the Hong Kong Shippers' Council (HKSC) advised that the surcharge was a uniform charge laid down by an association of shipping companies, known as the Intra-Asia Discussion Agreement (IADA). In response to the Council's enquiry, the Secretariat of IADA said that the mechanism in calculating the surcharge was transparent to the HKSC. However, as the complainant was not a member of HKSC, it had not been provided with the details of the surcharge mechanism. The Council found that the existing mechanism was not transparent to all parties. It is in the process of finalising a report on this case.

(9) Transport Department's proposal to contract out its licensing services

On 29 February 2000, a company providing financing and refinancing services to vehicle owners wrote to the HKMA to express concerns about the proposal of the Transport Department (TD) to contract out its licensing services. The company was concerned that a bank might win the contract for the licensing services, and this might remove the level playing field in the vehicle finance sector, as the appointed bank could then provide one-stop service, including financing services, to vehicle owners upon their renewal of licences. The case was referred to the TD, which considered that to a certain extent, the company's concern might be valid. In the light of the annual pre-budget rush for renewal of licences, TD was undertaking a comprehensive review of its licensing arrangements. TD may conduct consultations with the relevant sectors in considering the way forward in due course. TD's comments were reported to COMPAG on 1 June 2000. COMPAG had advised that TD should draw up clear guidelines in any outsourcing exercise to ensure equity and transparency, and to encourage competition by outsourcing extensively and signing contracts of limited duration.

5 Collaboration with the Consumer Council

5.1 In 2000-01, the Consumer Council ("the Council") continued to maintain a close working relationship with COMPAG, bureaux and departments on matters to enhance competition. Apart from working together to monitor the state of competition-related issues and complaints (see Chapters 3 & 4), the Council also participated and contributed to COMPAG's discussions on a number of issues as a full member. Moreover, the Council drew COMPAG's attention to other inquiries it had carried out arising from complaints made to the Council alleging anti-competitive practices. Details of those matters are summarised below.

(1) Competition in the market for lift maintenance services

The Council kept COMPAG informed of its on-going discussions with the trade and the Electrical and Mechanical Services Department (EMSD) with a view to enhancing the competitiveness of the lift maintenance market. This work arose from past allegations of limited competition in the market for maintenance of lifts. Suggestions had been put forward to the industry and government on options to improve the availability of proprietary information and spare parts necessary for competition in the market. Discussions are continuing among EMSD, the Council and industry representatives with a view to resolving the matter.

(2) Competition safeguards in banking, securities and futures markets

In June 2000, in response to a consultation exercise on the Securities and Futures Bill, the Council put forward its views to the Financial Services Bureau for consideration.

(3) Ready Mixed Concrete

Some Housing Authority (HA) contractors have claimed that a cartel exists in the ready mixed concrete market. In view of this, HA commissioned a consultant in 1999 to conduct a research mainly on the structure of the ready mixed concrete market and its impact on HA's flat production. The Council was contacted by HA in this regard and it had provided comments in relation to the HA consultant's recommendations on competition aspects.

6 Monitoring Trends and Developments in the International Scene

- 6.1 Issues relating to the interface of trade and competition policies continued to be the focus of discussions in major international fora such as the World Trade Organisation (WTO) and the Asia Pacific Economic Co-operation (APEC). COMPAG has continued to monitor these discussions.
- 6.2 On the WTO front, deliberations of the Working Group on the Interaction between Trade and Competition Policy (WGTCP) focused on the development dimensions of competition policy, the relevance of the WTO principles of non-discrimination and transparency to competition policy implementation, and approaches to promoting international cooperation. While the significance of a sound competition policy for economic development was generally agreed, members' views on international cooperation and multilateral rule making remained divergent. "Hong Kong, China" continued to advocate a balanced work programme, contending that both anti-competitive governmental measures and restrictive business practices should be addressed in a balanced manner.
- 6.3 On the APEC front, discussions mainly focused on implementation of the APEC Principles to Enhance Competition and Regulatory Reform, and technical assistance to developing economies. "Hong Kong, China" shared with Members its experience in implementing the APEC principles to Enhance Competition and Regulatory Reform and contributed to considerations for taking the Principles forward.
- 6.4 Hong Kong has continued to play an active and constructive role in these discussions. Drawing on our experience, Hong Kong's representatives have also, where appropriate, shared with other

participants the merits of a sectoral and results-oriented approach to promoting competition.

7 Further Work

- 7.1 In 2001-02, COMPAG will continue to -
- (a) encourage new initiatives to promote competition;
 - (b) identify areas that may not be fully compatible with the competition policy, and review scope for refinement;
 - (c) keep under review the various competition-related issues examined in previous years;
 - (d) keep track of competition-related cases or complaints received from different sources, and review, on a need basis, those cases which have policy or systemic implications; and
 - (e) monitor trends and developments in the discussions on competition policy in the international scene that may have a bearing on Hong Kong.
- 7.2 In addition, the COMPAG Secretariat plans to organise seminars and training programmes on competition issues for Government officers. It also plans to increase publicity on Government's competition policy and the work of COMPAG.

**Competition Policy Advisory Group
Terms of Reference and Membership**

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

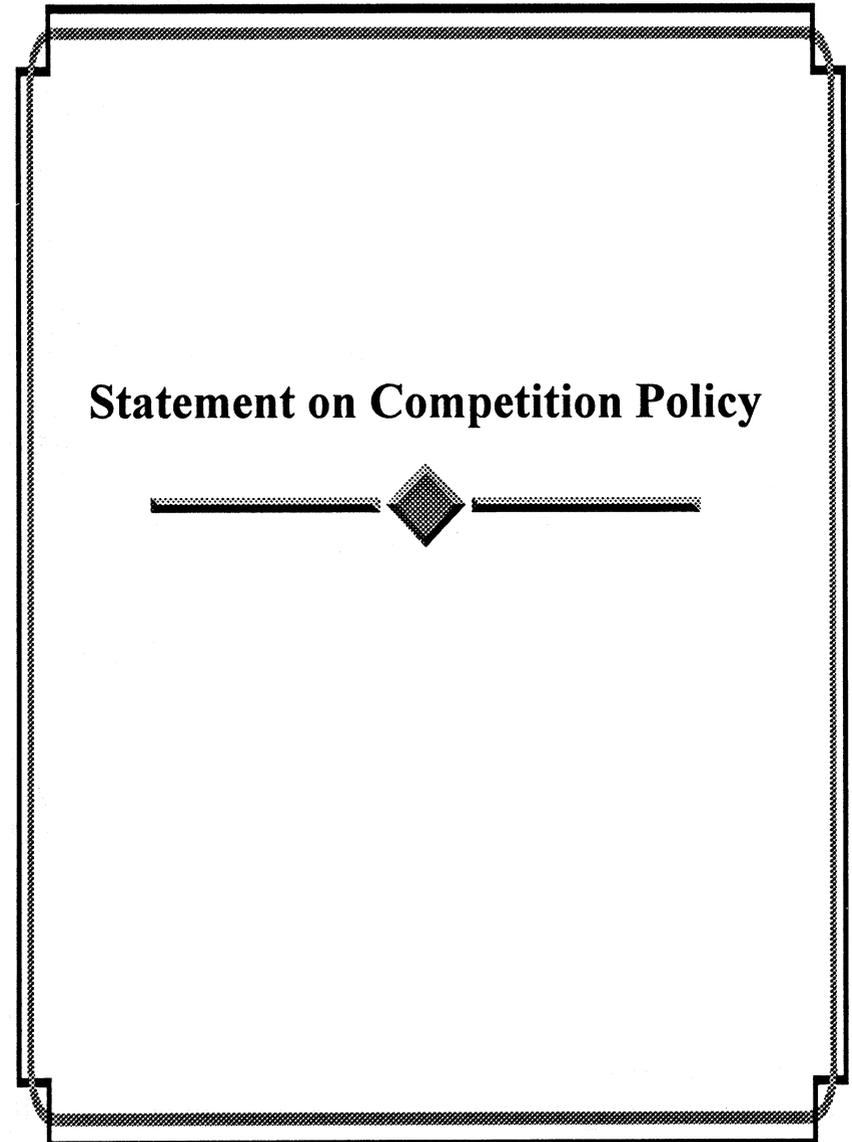
- Chairman** ➤ Financial Secretary
- Members** ➤ Secretary for Commerce and Industry
 - Secretary for the Treasury
 - Secretary for Economic Services
 - Director-General of Trade and Industry
 - Government Economist
 - Consumer Council (since April 2000)
- Secretary** ➤ Principal Assistant Secretary for Economic Services
- Observers** ➤ On a need basis

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Members of the public may lodge competition-related complaints with:

- the relevant bureaux or departments; or
- the Trade Practices Division of the Consumer Council
22/F, K. Wah Centre, 191 Java Road
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Tel : 2856 3113
Fax : 2102 4523
E-mail : competition@consumer.org.hk



Statement on Competition Policy

Introduction

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. Because 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.

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

* 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").

- (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. We also expect them 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