

COMPAG

2001
Competition Policy Advisory Group Report
2002

CONTENT

CONTENT

1. Introduction	33
2. New Initiatives	35
3. Progress of Previous Initiatives	44
4. Complaints	49
5. Publicity and Training	61
6. Developments in the International Scene	63
Annex I: Terms of Reference and Membership	64
Annex II: Statement on Competition Policy	66

1. Introduction

Competition is everyone's business because its ultimate goal – to enhance economic efficiency – brings benefits to the entire community.

Government bureaux and departments have a shared responsibility to promote competition. The Competition Policy Advisory Group (COMPAG), a dedicated forum to examine competition issues, directs and tenders advice.

As it moved into its fifth year, COMPAG undertook a review of its role in 2001-02. The review reaffirmed COMPAG's central role to oversee and review competition issues, and recommended that it should adopt a more proactive approach in order to perform its role effectively. In future, working groups might be formed as and when necessary to enhance COMPAG's expertise and to study competition issues which have implications across different sectors. COMPAG will also seek to boost the support and training available to policy bureaux and departments.

This report, covering the period from April 2001 to March 2002, presents in Chapter 2 the nine new initiatives of bureaux and departments examined by COMPAG during the year. The initiatives relate to various sectors, and illustrate the Government's commitment to promoting competition. The report also provides in Chapter 3 an update on previous initiatives.

The Government takes complaints of anti-competitive conduct seriously. COMPAG keeps track of these complaints, be they lodged with the relevant bureaux and departments direct, or through other channels such as the Consumer Council. With the relevant bureaux and departments investigating and taking follow-up actions, and COMPAG tendering advice, the Government ensures that all the complaints are properly handled. Complaints examined by COMPAG in the past year are set out in Chapter 4.

Enhancing communication with the public is another priority of COMPAG. The COMPAG Report has hitherto been the crucial vehicle. Henceforth, the COMPAG website (www.compag.gov.hk) will provide an additional channel for information dissemination.

COMPAG has been vigilant in monitoring trends and developments in the international fora relating to competition policy. A major issue in 2001- 02 was whether the World Trade Organisation (WTO) should launch negotiations on trade and competition: WTO members agreed that multilateral negotiations would only take place on the basis of a consensus reached on the modalities of the negotiations. “Hong Kong, China’s” participation in the WTO discussions and in other international fora are outlined in Chapter 6.

COMPAG welcomes feedback on its work, and looks to businesses and the public for continued support in this important area.

2. New Initiatives

New Initiatives

(1) **Liberalising parallel importation of computer programs**

Computer programs lawfully produced outside Hong Kong could not be imported for sale in Hong Kong without the consent of the copyright owner or the relevant exclusive licensee, because of restrictions under the Copyright Ordinance.



Remove the restrictions

The then Commerce and Industry Bureau introduced a Bill into the Legislative Council on 19 December 2001 to remove the relevant restrictions. The Bill was being scrutinized by a Bills Committee of the Legislative Council.

(2)

Electronic data interchange services for processing official trade-related documents

Under an exclusive franchise agreement between the Government and Tradelink Electronic Commerce Limited (Tradelink), the trading community must make use of the front-end electronic data interchange (EDI) services provided by Tradelink in submitting certain trade-related official document, e.g. trade declaration, to the Government.



Engage more service providers

The then Commerce and Industry Bureau (the Commerce, Industry and Technology Bureau w.e.f. 1 July 2002) planned to engage two additional front-end EDI service providers upon the expiry of Tradelink's franchise at the end of 2003, while continuing to engage Tradelink's services on a non-exclusive basis after 2003 to prevent disruption to service. The plan was to invite tenders and appoint the new service providers in 2002. Tenders were invited and new service providers would be appointed within 2002.

(3)

Payment services used by the Government

While many banking services used by the Government are acquired on a competitive basis, this was not the case for the Treasury's payments by Autopay, initial paying-in of daily revenue collections and payments by cheque.



Invite tender for the services

In 2001-02 with the launch of the PayThruPost service, Hongkong Post took over from the Treasury the service of collecting payments for government bills over the counter. Hongkong Post had since launched a tender exercise for the collection and banking of the cash and cheques received at its post office counters under the PayThruPost. Tender assessment was under way.

The Treasury will arrange for further tender exercises in 2002-03 for the provision of other banking services such as autopay and payments by cheque.

(4)

Allocation of new welfare units

The present day social welfare development places emphasis on the effective use of public resources, innovation, responsiveness and performance management to meet changing community needs in a timely manner. However, the conventional mode of allocating social welfare services units among Non-Government Organisations (NGOs) does not promote sufficient competition to support such development.



Competitive bidding for new service units

The Social Welfare Department implemented a new mode of allocating new service units, basically through competitive bidding, for “Home Care and Meal Services” and “Enhanced Home and Community Care Services for the Elderly” in 1999 and 2001 respectively, with proven success in attracting applications and achieving cost effectiveness. Taking on board the views and concerns of various stakeholders, the Department further allocated two new Residential Care Homes for the Elderly (RCHEs) through competitive bidding, involving both NGOs and the private sector. Contract of one of the two RCHEs was awarded in December 2001 and another would be awarded in July 2002. The Department plans to allocate another six RCHEs, some of which are intergrated projects providing also community services for the elderly, in the current financial year.

(5) Access to the trading facilities of the Stock Exchange of Hong Kong Limited and the Hong Kong Futures Exchange Limited

There were 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).



Remove the restrictions

In the past, the right of access to the trading facilities of SEHK and HKFE was restricted to members of the two exchanges. These members were required to be shareholders of the two exchanges. Upon the demutualisation and merger of the two exchanges and their associated clearing houses under the Hong Kong Exchanges and Clearing Limited (HKEx) on 6 March 2000, ownership of shares in SEHK and HKFE and access to their trading facilities were separated. Each former SEHK and HKFE shareholder was issued a trading right of SEHK or HKFE, as the case may be, for each share held on SEHK or HKFE immediately before the merger. At the same time, SEHK and HKFE imposed a moratorium on the issue of new trading rights (except for such rights as may be issued in respect of alliances with other exchanges) for a period of two years. Furthermore, no new SEHK or HKFE trading right will be issued for less than the specified consideration for a further period of two years.

The moratorium on the issue of new trading rights was removed on 6 March 2002. Starting from 6 March 2004, the lower limit on the price of new trading rights will also be removed.

(6)

Criteria for granting banking licence

Applicants for a full banking licence are subject to a number of market entry criteria .



Relax the market entry criteria

In the past, apart from satisfying various prudential requirements set out in the Banking Ordinance, a locally incorporated applicant for a full banking licence must also have been a Restricted Licence Bank (RLB) or Deposit-taking Company (DTC) in Hong Kong for at least ten continuous years and must be closely associated and identified with Hong Kong. As for an overseas-incorporated applicant, the total assets of the whole banking group of which the applicant is a part must be more than US\$16 billion (about HK\$125 billion). These criteria are intended to limit the number of eligible applicants with a view to avoiding “over-banking” in the industry.

In view of the ongoing consolidation in the sector and the fact that the banking supervisory system had been further strengthened, the Hong Kong Monetary Authority (HKMA) believed that some of the existing market entry criteria could be relaxed without compromising banking stability. In particular, it was proposed that the requisite period of operation as an RLB or DTC should be reduced to three years, the “association with Hong Kong” requirement should be dispensed with and the asset size requirement for overseas-incorporated applicants should be substantially reduced (HK\$3 billion for total deposits and HK\$4 billion for total assets).

These proposals have been adopted by The Executive Council. They took effect from May 2002. The HKMA believes that these new measures would attract more institutions to participate in the Hong Kong banking sector, thereby promoting greater competition in the industry and enhancing the status of Hong Kong as an international financial centre.

(7)

Sourcing of building materials and components for housing projects

Under the previous Approved List System, contractors of Housing Authority (HA) projects were required to select proprietary building materials and components only from the Approved Lists, and were not allowed to propose alternatives.



Allow alternatives

Since 1 June 2000, the HA had implemented a new listing system which replaced the Approved Lists with three Control Lists. At the initial stage of implementing this new system, contractors could only propose alternatives for materials and components under Control Lists II and III for approval on a project-by-project basis. For Control List I (which consisted of six types of materials and components critical to the safety and integrity of buildings, thus requiring more stringent quality control), however, contractors must still select materials and components from the List, and no alternatives were allowed.

To enhance competition, the HA decided to allow contractors to propose alternatives also for items under Control List I. The alternatives proposed would be centrally assessed by the Housing Department's Components & Materials Team to ensure effective quality control. The new arrangement came into effect in November 2001.

(8) Access to new broadcasting and telecommunications services

Overseas experiences have shown that set-top boxes for receiving digital television programmes and telecommunications services may incorporate conditional access features which make it difficult for consumers to access services offered by other broadcasters and telecommunications operators.



Regulate set-top boxes

The then Information Technology and Broadcasting Bureau (The Commerce, Industry and Technology Bureau w.e.f. 1 July 2002) and the Office of the Telecommunications Authority (OFTA) considered it necessary to ensure that set-top boxes provided by different operators were inter-operable and inter-connectable so that they would not create barriers to other broadcasters and telecommunications operators competing in the same market. OFTA planned to conduct a consultation on the policy, technical and regulatory issues relating to set-top boxes in late 2002 / early 2003. Thereafter, OFTA may need to prescribe a set of technical standards or requirements for set-top boxes, in around 2003 or earlier.

(9)

Fixed Telecommunications Network Services licence

Under the progressive liberalisation policy announced in 1999, Government would not issue any new local wireline-based Fixed Telecommunications Network Services (FTNS) licences for operation before 1 January 2003.



Issue new FTNS licences for operation from 2003

To fully liberalise the local FTNS market, the Government conducted a public consultation in 2001-02 and invited applications for new local wireline-based FTNS licences for operation from 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 will be determined by the market.

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 2001-02.

Initiative	Progress
Energy	
(1) Explore the feasibility of increasing competition in the electricity supply sector	<p>A detailed technical study was commissioned to identify issues involved in increasing interconnection between the two power companies.</p> <p>Separately, a review commenced for the purpose of drawing up the framework for the regulation of the electricity supply sector upon expiry of the existing 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 pertaining to the removal of privileges would come into operation on a day to be appointed by the Secretary for Justice. The relevant rules were available in draft form.
(3) Relax the restrictions on solicitors in terms of the right of audience in the higher courts	The Department of Justice was consulting the Bar Association and the Law Society on the proposal.

Works	
(4) Align local construction standards with international standards where appropriate	A Provisional Construction Industry Coordination Board was set up in September 2001. It would, in collaboration with the then Works Bureau (the Environment, Transport and Works Bureau w.e.f. 1 July 2002), take the lead to establish a central construction standardisation body.
Education	
(5) Foster a strong private school sector	The terms of the Direct Subsidy Scheme (DSS) were modified to attract conversion of more aided schools to DSS schools. Three aided secondary and two aided primary schools would be so converted in September 2002.
Food and beverages	
(6) Liberalise the rice trade by 1 January 2003	On 1 January 2002, the rice reserve level was further brought down to 13 500 tonnes (15 days' local consumption). The Trade and Industry Department would further relax the registration criteria for rice importers and remove the import quota.

(7) Remove restrictions on the alcoholic strength of Chinese - type spirits

The Customs and Excise Department consulted the trade in 2001 and this year 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 would consult the Legislative Council for views on the related legislative amendments.

Telecommunications and Broadcasting

(8) Issue licences for Third Generation (3G) Mobile Services

Licences were issued to four successful bidders in October 2001. To ensure competition at both the network and service application levels, 3G network operators are required to make available 30% of their network capacity for interconnection to, or access by, non-affiliated Mobile Virtual Network Operators and/or content providers on a non-discriminatory basis.

- | | |
|--|--|
| <p>(9) Introduce broadcasting satellite services (BSS)</p> | <p>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 the first quarter of 2003. The BSS facility provider was required by its licence to make available the facilities in a non-discriminatory manner.</p> |
|--|--|

Financial services

- | | |
|---|---|
| <p>(10) Relax the one-building condition on foreign banks</p> | <p>The condition, which restricted the number of buildings in which foreign banks licenced since 1978 and foreign restricted licence banks licensed since 1990 could operate, was removed in November 2001.</p> |
| <p>(11) Review the retail payment systems in Hong Kong</p> | <p>The review completed in 2001 concluded that Hong Kong's retail payment systems generally functioned well. It also made recommendations in respect of the different retail payment channels and the regulatory approach for oversight of retail payment services in Hong Kong. The Hong Kong Monetary Authority was assisting and monitoring the trade in taking forward the recommendations.</p> |

(12) Deregulate interest rates

The final phase of deregulation took place in July 2001. All deposit interest rates are now subject to competitive market forces.

(13) Abolition of minimum brokerage commission

The Board of Hong Kong Exchanges decided in February 2002 to defer the abolition of minimum brokerage for one year, until 1 April 2003.

4. Complaints

Case 1

Subscription of IDD service

A telecommunications service provider was alleged to have created barriers for customers who wished to switch to other fixed line services. The complainant said the service provider required prospective subscribers of its IDD service to provide telephone bills and pay a deposit at its retail outlets or provide a bank guarantee if they were not current subscribers of its fixed line service. More complicated activating/ deactivating procedures were also set for these subscribers if they wished to use the IDD password function.

In view of the competitiveness of international call services, the Telecommunications Authority (TA) considered that it should be for the individual service providers to make their commercial decisions on credit control. In this regard, the TA did not find the practice of the service provider in question deviated significantly from that of other major market players. Nor did he agree that the service provider gave preference to its own fixed line customers in terms of the requirement for deposit/ bank guarantee. Regarding the IDD password function, the TA noted that simple access codes could not be used across networks. As such he did not consider the service provider concerned had imposed unnecessarily complicated procedures for its IDD customers who used the fixed line services of other service providers.

Case 2

Alleged discriminatory service delivery time

The complainant was an Internet Service Provider (ISP) who subscribed to certain network services in order to provide Internet access to its customers. He alleged that 28 days was required for the network services to be delivered to him, while another ISP affiliated to the same network service provider could obtain the services within ten days.

The TA was collecting information so that he could decide whether there had been a breach of Section 7K of the Telecommunications Ordinance which prohibited conduct which had the effect of preventing or substantially restricting market competition.

Case 3

Alleged anti-competitive conduct by an ISP

The complainant subscribed to the broadband services of an ISP (ISP A). He alleged that when he requested termination of the services, with a view to subscribing to similar services offered by another ISP (ISP B), his network access had to be frozen for seven days, during which period ISP B could not provide services to him. The complainant considered ISP A's practice anti-competitive.

The TA's investigation revealed that seven days was the shortest possible notice period that ISP A allowed for termination of its broadband Internet services. This was to allow sufficient time for the necessary administrative work and collection of modem at the customer's premises. The TA noted that the requirement for service termination notice was a common practice, and did not consider a notice period of seven days unreasonable. Moreover, a customer could still use the services of ISP A during the notice period, and if he chose to subscribe to services of another ISP, that ISP could arrange to provide the service on the same date as ISP A terminated its service. In other words, there was no evidence of any "frozen period" imposed on customers. The TA therefore did not consider the complaint established.

Case 4

Alleged discriminatory service provision

There were allegations that a network service provider discriminated between its affiliated company (an ISP) and other ISPs in the provision of certain network services required for Internet access. The complainants alleged that for ISPs which closed their business and agreed to transfer their customers to the network service provider's affiliated ISP, the network service provider would offer a smooth transition for the customers, whereas for transfer of customers between other ISPs, re-installation of services at the customers' premises would be required.

Findings of the TA indicated that the network service provider provided a gazetted service which allowed smooth migration of customers between ISPs and did not require re-installation of services at the customers' premises. The service was available to all ISPs. The TA further noted that some customers who chose to migrate to ISPs other than the ISP affiliated to the network service provider also enjoyed a seamless transfer. The TA therefore did not consider the complaint established.

Case 5

Competition between the Hong Kong Productivity Council and private companies

A complainant alleged that the Hong Kong Productivity Council (HKPC), as a Government subvented organisation, was able to compete unfairly with private companies in bidding for a service tender.

In order to retain its core skills and keep abreast of developments in the market and the industry, HKPC provides services to both the under-served market and mature markets where there are alternative suppliers. To avoid unfair competition with suppliers in mature markets, HKPC has laid down strict guidelines on its pricing policy, including the setting of service charges on a cost-plus basis along commercial lines.

HKPC confirmed that they adopted the same principle in bidding the particular tender that gave rise to the allegation. As HKPC had not competed with the private sector at below market price, the then Commerce and Industry Bureau considered that the complaint was not substantiated. Nevertheless, HKPC is currently reviewing its management and operation; its pricing policy will also be reviewed in that context.

Case 6

Testing of imported chilled meat

As local and imported live pigs were held and tested for detection of beta-agonist residues before slaughter, some local pig farmers and fresh meat traders requested the Government to introduce a similar ‘hold-and-test’ arrangement for all imported chilled pork.

The Food and Environmental Hygiene Department (FEHD) advised that live pigs and chilled meat were subject to different inspection and testing schemes as the two commodities were of different nature. Live pigs to be slaughtered locally had to pass a set of stringent tests at the slaughterhouses for detection of chemical residues such as beta-agonist, which were mainly concentrated in the offal of the pigs, before they were allowed to be slaughtered and released to the market for sale. Appropriate follow up actions would be taken by FEHD if the results of the test were found to be unsatisfactory. On the other hand, imported chilled meat, which was not sold with any offal, had already undergone similar testing procedures at the slaughterhouses at the places of origin prior to the slaughtering of the pigs and export to Hong Kong. Moreover, the imported chilled meat would be subject to stringent inspection and sampling by FEHD again upon entry into Hong Kong. As such, the Government had no scientific justifications to accede to the trade’s request to institute “hold-and-test” measure for each consignment of all imported chilled meat.

The trade’s cooperation remains the key part of the tripartite collaboration among the Government, the trade and the public in safeguarding food safety and public health. Members of the local trade were thus urged to comply with the additional licensing conditions imposed on the storage and display of chilled meat for sale since 24 September 2001.

Case 7

Aviation security services

The complainant considered that not all of the security services now exclusively provided by one single company within the restricted areas of the Hong Kong International Airport were essential security services that had to be provided by the same company. It urged for introducing competition in the provision of some of these services.

The Security Bureau considered it important to maintain the integrity of the restricted areas, thus the need for vigilance and a high standard of security control within these areas. The arrangement of having one aviation security service provider in the restricted areas avoided a proliferation of security companies operating there and the implications for security that this might have.

Case 8

Mid-stream fees

The complainants alleged that the charging of mid-stream fees by members of the Mid-Stream Operators Association was against fair competition.

The then Economic Services Bureau (ESB) contacted the relevant trade organisations and the truckers' organisation and encouraged them to settle the dispute through dialogue. Thereafter, representatives of the trade organisations held several discussions on the fee-collection mechanism. Hong Kong Mid-stream Operators Association maintained that the aim was to collect the charges from the shippers and not from the truckers.

The then ESB had been closely monitoring the development. It further set up a mechanism in mid-2001 to provide channels for the affected truckers to lodge their complaints. While the collection of mid-stream fees is a commercial matter, the Government will continue to liaise with the trade and encourage them to resolve problems through dialogue.

Cases 9 & 10

Yen Appreciation Surcharge

“Yen Appreciation Surcharge” (YAS) was imposed by a container liner company on cargo shipments from Japan to hedge against exchange rate risks. The complainant alleged that the imposition of YAS was the result of a cartel, and that the surcharge did not reflect contemporary movements in the exchange rate.

Terminal Handling Charges

The complainant was concerned that Terminal Handling Charges (THC) had been set at a uniform rate by members of agreements among shipping lines, and had been increasing unchecked.

Shipping line agreements are international agreements and a common practice worldwide. The Consumer Council studied both cases and commented that ideally the imposition of YAS and its adjustment formula should be settled between shipping lines and shippers through closer liaison and negotiation, whereas the THC should reflect the competition for shippers among shipping lines. It further recommended to the Port and Maritime Board (PMB) the introduction of a process to examine allegations of restrictive practices, empowering shippers in negotiations with the shipping lines, and increasing the transparency of charge setting mechanisms, through the development of a code of practice by the industry, as per the Government's policy of encouraging the private sector to adopt pro-competition measures such as self-regulatory regimes.

The PMB explained that THCs were determined with reference to international agreements. Shippers had been monitoring the THC and the shipping market for some years and had established dialogue with shipping lines and terminal operators. The PMB had been facilitating this dialogue, and transparency in the charge setting mechanism had been improved through the PMB's mediation efforts. As regards providing shippers with countervailing power, the PMB considered that it should be part of the negotiation mechanism to be agreed among the parties. For the setting up of self-regulatory code of practice, the PMB welcomed the Consumer Council's offer in this regard.

Cases 11 & 12

Promotional sales of electrical water heaters

The complainant alleged that the sale of electrical water heaters by a power company at around 16% to 19% of market prices ran contrary to the principle of fair competition.

Promotional sales of electrical appliances

A group of electrical appliances retailers alleged that the sale of electrical appliances by the two power companies below cost was not conducive to fair competition in the electrical appliances market.

The then Economic Services Bureau (ESB) understood from the two power companies that the schemes were launched as part of their promotion efforts to encourage the use of electricity. Only first-time applicants at certain public rental housing estates and village houses could enjoy the price discounts.

The electrical appliances supply contracts for one power company's promotion schemes were granted by open tender, while the other power company ran its promotion schemes jointly with interested suppliers. Moreover, all the promotion schemes in question were targeted at certain public rental housing estates and village houses, and it was not the power companies' intention to compete with other suppliers in the open market. The then ESB therefore considered that the two power companies, in pursuing their respective promotional scheme, were not running contrary to the principle of fair competition.

Case 13

Vehicle maintenance manual

Alleging that vehicle manufacturers were reluctant to release maintenance manuals, the complainant urged the Administration to introduce legislation to require the release of vehicle maintenance manuals in full.

The Transport Department informed the complainant of the Hong Kong Motor Traders Association's agreement to release information on the emission system of Pre-Euro diesel vehicles. In addition, the Hong Kong Institute of Vocational Education has established an Automotive Engineering Database Centre to provide technical service information and data for the automotive repair and servicing industry of Hong Kong.

The Administration was not aware of any country which had specific legislation requiring vehicle importers or manufacturers to release maintenance manuals. The Administration will continue to maintain close liaison with the trade to keep in view new development and to render support to the trade as appropriate.

Case 14

Digital certificate on Smart ID Card

The complainant challenged the Government's decision to allow only those digital certificates issued by the Hongkong Post, but not other private companies, to be embedded on Smart ID Cards.

In the light of views expressed during public consultation, the then Information Technology and Broadcasting Bureau (ITBB) was concerned that there was unease among the public about the inclusion of applications provided by commercial parties in the Smart ID Card at the initial stage of its introduction. It therefore considered it prudent to have only recognised certificates of the Hongkong Post, a Government application, on the Smart ID Card for the time being. Nevertheless, ITBB did not rule out the possibility of having digital certificates issued by commercial certification authorities on the Smart ID Card, if and when there was widespread public support for commercial on-card applications.

5. Publicity and Training

Publicity

COMPAG fully appreciates that the community has a right to know the Government's competition policy and what it has done in promoting competition. Providing this information to the public is the primary objective of COMPAG's publicity programme.

In 1998, COMPAG took its first step to promulgate the Statement on Competition Policy (see Annex II), which sets out the objective of the Government's competition policy and offers specific pointers for compliance.

In the years that followed, annual COMPAG Reports were the key communication tool. Through them, local readers and interested parties abroad came to learn about the efforts of the Government in promoting competition. Improvements had been made from time to time to enrich the report's content. An example is the decision, since the second report, to disclose details of how Government bureaux and departments handle complaints. At the same time, the report has to be succinct. For instance, with the Consumer Council becoming a member of COMPAG and contributing directly to its operation, a separate section to elaborate on this collaboration is no longer required.

A new idea that emerged in 2001-02 was to complement the annual COMPAG Report with a dedicated website on the HKSARG's competition policy. The new COMPAG website, launched in parallel with the publication of this report, provides easy access to previous competition-related publications and hyperlinks to websites of bureaux and departments where more information on sector-specific pro-competition measures is available. It is hoped that the website will be a comprehensive and convenient source of reference for users.

Training

Bureaux and departments have the responsibility to oversee market competition in their respective portfolio, and to initiate sector-specific measures to rectify anti-competitive conduct and promote competition. COMPAG fully recognises the support, in terms of training, that bureaux and departments need in order to perform these functions effectively.

At the policy formulation level, the Government has an established mechanism to give expert advice on the impact of new proposals on competition. At the operational level, officers also need to be apprised of competition principles and practicalities. To this end, COMPAG has been preparing training packages and identifying workshops and seminars for more focussed training and experience sharing. A workshop presented by overseas experts in December 2001, for instance, was well-received by participants from over 30 bureaux and departments.

6. Developments in the International Scene

Issues relating to the interactions between trade and competition policies continued to attract intensive 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.

On the WTO front, the question of the desirability of developing a multilateral framework on competition policy was hotly debated among Members in the past year. As a result of the intensive consultations at the fourth WTO Ministerial Conference (MC) held in Doha in November 2001, it was agreed that multilateral negotiations on trade and competition would take place after the fifth MC (to be held in 2003) on the basis of a decision to be taken, by explicit consensus, at that MC on the modalities of negotiations. In the period until the fifth MC, the Working Group on the Interaction between Trade and Competition Policy would focus on the clarification of core elements of a possible multilateral framework on competition policy. “Hong Kong, China” continued to participate actively in the discussions with a view to ensuring that future WTO work in this area would reflect the wide-ranging needs and interests of Members.

On the APEC front, a major achievement for 2001 was the development and eventual adoption of the revised Osaka Action Agenda guidelines on competition policy. During the drafting process, “Hong Kong, China” emphasised the need to accommodate the diversity in competition institutions and instruments across Member economies.

Apart from contributing to the work of major international fora, “Hong Kong, China” has continued to share with the international community our experience that an open market policy, reinforced by sector-specific measures, is effective in promoting competition.

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 Financial 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

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) 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.

* 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. 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