

競爭政策諮詢委員會工作報告

COMPAG

Competition Policy Advisory Group Report

2005 – 2006
(**English version**)

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1. Introduction

Established in December 1997, the Competition Policy Advisory Group (COMPAG) is a high-level forum for examining, reviewing and advising on competition-related issues. Under the chairmanship of the Financial Secretary, COMPAG aims to promote competition as part of a pro-enterprise, pro-market business environment in Hong Kong.

2. Since its establishment, COMPAG has sought to ensure that the Government's competition policy caters for present-day circumstances and meets changing needs. In May 1998, the Group promulgated the Statement on Competition Policy, which set out the Government's approach to competition regulation and laid out the basis for the existing regulatory regime. In September 2003, COMPAG published guidelines aimed at advising businesses as to the types of practice that might constitute anti-competitive conduct.

3. On 1 June 2005, COMPAG appointed the Competition Policy Review Committee (CPRC) to review Hong Kong's competition policy with a view to determining whether this policy is appropriate to the present circumstances in Hong Kong. The review has been completed, and the work of the CPRC is discussed in **Chapter 2** of this report.

4. COMPAG is charged with fostering competition in both the public and private sectors in Hong Kong. It seeks to identify areas in the economy where competition is being impeded, and to initiate appropriate remedial action. It also reviews areas in which there is scope for competition to be enhanced. New initiatives that have been taken in the year 2005-06 are outlined in **Chapter 3** of this report. Together with initiatives launched in previous years, which are reported on in **Chapter 4**, more than 70 initiatives have been taken to encourage competition since COMPAG was established.

5. A major part of the work of COMPAG is the handling of competition-related complaints. Upon receiving such a complaint, COMPAG initially refers this to the relevant bureau or department for follow-up action, and advises the bureau or department that the complaint should be handled promptly and in accordance with established policy and

procedures. COMPAG keeps track of progress with each complaint until it reaches a satisfactory conclusion. COMPAG also initiates studies on specific competition-related issues, as reported in **Chapter 5**.

6. In considering the way forward for Hong Kong's competition policy, COMPAG will continue to promote the benefits of competition in the wider community. A brief summary of recent initiatives in this regard is outlined in **Chapter 6**. The Group will also continue to monitor developments in international competition policy and law, and will consider how best to ensure that our own competitive environment is in line with the highest international standards. **Chapter 7** briefly reviews recent developments on the international stage.

2. Competition Policy Review Committee

7. In his 2005 – 06 Budget Speech, the Financial Secretary announced the appointment of the Competition Policy Review Committee (CPRC) to review our competition policy, including the composition, terms of reference and operations of COMPAG, so as to ensure that this policy meets our current needs.

8. In conducting its review, the CPRC looked at international examples of competition law, as well as the regulatory regimes for ensuring competition in Hong Kong's telecommunications and broadcasting industries. The CPRC also reviewed the findings of a study on competition in the auto-fuel retail sector.

9. In June 2006, the CPRC completed its review and submitted its recommendations to the Government. In its report, the CPRC advised that any new approach to competition regulation should maintain the current policy objective of "enhancing economic efficiency and free trade, thereby also benefiting consumer welfare". Any new regulatory regime should not be used to introduce competition artificially, but rather to reinforce Hong Kong's pro-enterprise environment.

New competition law

10. Having reviewed best practice in other jurisdictions and taken account of local stakeholders' concerns, the CPRC concluded that legislative backing is needed for the effective enforcement of Hong Kong's competition policy. The review committee recommended that a new law be introduced to safeguard markets against anti-competitive conduct, and that the new law -

- should be cross-sector in nature, rather than target certain sectors of the economy;
- should not target market structures or seek to regulate "natural" monopolies or mergers and acquisitions;
- should provide for exemptions from the law where necessary on

public policy or economic grounds; and

- should prohibit specific types of anti-competitive conduct.

11. The CPRC recommended that the following anti-competitive practices, based on those listed in the COMPAG guidelines, should be covered under the new law -

- Price-fixing
- Bid-rigging
- Market allocation
- Sales and production quotas
- Joint boycotts
- Unfair or discriminatory standards
- Abuse of a dominant market position

12. These practices should not constitute violation of the new law unless it could be shown that they carried the intent to distort normal market operation or had such an effect. Where a breach of the law was found to have occurred, civil rather than criminal sanctions should be imposed on offenders.

13. The CPRC also recommended that guidelines should be drawn up to explain the application of the new law.

Competition regulatory framework

14. With respect to the framework for enforcing the new law, the CPRC proposed that a regulatory authority, to be known as the Competition Commission, should be established, consisting of a governing board and a full-time executive office. To help ensure the effective collection of evidence, the Commission should be granted the power to compel parties to provide information. Appropriate checks and balances should be put in place so as to guard against possible abuse of regulatory power.

15. The CPRC also recommended that the Commission be charged with promoting the new law and raising awareness of the importance of fair competition to the efficient functioning of markets.

16. The CPRC acknowledged that the role of COMPAG was limited and could be strengthened in several areas. However, in light of the proposed establishment of a Competition Commission, which would take over the work currently done by COMPAG, the CPRC considered it unnecessary to make recommendations on the future role of COMPAG.

17. In concluding its report, the CPRC urged the Government to thoroughly engage the public in discussion on the way forward for competition policy in Hong Kong. The Government is expected to conduct the public consultation within 2006.

18. The full report of the CPRC can be found at the following web page:
<http://www.edlb.gov.hk/edb/eng/info>

3. New Initiatives

19. COMPAG has noted the following initiatives aimed at enhancing competition or eliminating anti-competitive behaviour that have been taken by various agencies during the period under review.

Initiative 1 - Preparation of an Accounting Separation Manual for Television Programme Service Licensees

20. Section 17 of the Broadcasting Ordinance (Cap. 562) requires television programme service licensees who also hold a telecommunications service licence under the Telecommunications Ordinance (Cap. 106) to adopt separate accounting. This measure is aimed at preventing and forestalling anti-competitive conduct in cases where a broadcaster is both a broadcasting licensee and a telecommunications licensee.¹

21. In February 2006, the Broadcasting Authority (BA) published a draft accounting separation manual for consultation with the industry and the Hong Kong Institute of Certified Public Accountants. The manual will provide the benchmark for best accounting practices for reference by licensees, as well as a basis for evaluation when the BA investigates complaints against practices such as cross-subsidisation and discriminatory pricing.

22. Subject to the outcome of the consultation process, the BA plans to release the finalised Accounting Manual in the 2006.

Initiative 2 - Measures to Prevent Possible Unfair Competition in Auctions of Lunar New Year Fair Stalls

23. To maintain order and to help prevent unfair competition at auctions for Lunar New Year Fair (LNYF) stalls, the Food and Environmental Hygiene Department (FEHD) has stipulated in the relevant auction notice that during the auction, no one shall interfere with the bids of other persons or cause other persons to surrender their bids for a certain pitch. Notices are

¹ For example, when a broadcasting licensee leases its transmission network to an external party, but allows its internal broadcasting business to use the network at a much lower transfer price, the licensee is engaging in discriminatory pricing by allowing its internal broadcasting business to have an unfair price advantage over competitors.

displayed at FEHD district offices, auction venues and on the FEHD website.

24. Staff of FEHD and police officers will be present at auction halls to maintain order during open auctions. Before the auctions, staff of FEHD will announce to all participants that it is an offence under the Prevention of Bribery Ordinance, Cap. 201 to offer, solicit or accept an advantage as an inducement to or reward for refraining from bidding at the auction.

25. In 2006, FEHD implemented further improvement measures at the auctions for LNYF stalls. These measures include video recording of the auction as a deterrent against misbehaviour, with the prior announcement of this arrangement to all the participants at the auction, and the use of identification boards by floor staff for easy recognition of bidders by auction staff on the stage. FEHD will keep the auction arrangements under review and introduce further improvements as necessary.

4. Progress of Previous Initiatives

26. This chapter provides a brief update on progress with initiatives aimed at promoting competition that have been reported in previous COMPAG annual reports.

1) Future regulatory requirements for the electricity supply sector

27. The Government launched a Stage II consultation exercise in December 2005 to seek further public views on the future regulatory regime for the electricity supply sector, including the question of how competition in this sector might be promoted. The consultation period ended on 31 March 2006. The Government will take into account the comments received from the public when considering the development of the post-2008 electricity market.

2) Study of Competition in the Auto-fuel Market

28. On 28 July 2005, on behalf of COMPAG, the Economic Development and Labour Bureau (EDLB) appointed a consultant, Arculli and Associates, to conduct a study on the auto-fuel market in Hong Kong. The consultant was tasked to -

- report on the current competition situation in the auto-fuel market;
- examine whether there is evidence of anti-competitive conduct, in particular collusion, among the oil companies;
- advise on how to enhance competition in the auto-fuel market and to lower auto-fuel retail prices; and
- determine whether new regulatory measures such as legislation were needed

29. Under the direction of a Steering Committee chaired by the Permanent Secretary for Economic Development, the consultant completed the study at the end of 2005 and submitted a report to the Government. In

the report, the consultant concluded that there was no clear evidence of collusion among Hong Kong auto-fuel suppliers. However, due to the inherent characteristics of the Hong Kong auto-fuel market, in particular its concentration, degree of vertical integration and relatively small scale, there was a risk that collusion could occur. The consultant recommended that the Government should consider taking preventive measures, such as introducing a general or sector-specific competition law aimed at prohibiting cartel behaviour and anti-competitive mergers, in order to address the issue.

30. The consultant observed that there are clear signs that the pricing of auto-fuel in Hong Kong is becoming increasingly competitive. Nonetheless, it also recommended the adoption of measures that could help further promote competition, such as improving the auction process for public filling station sites.

31. The consultant's findings were passed to the Competition Policy Review Committee (CPRC), and the committee took these findings into account in the course of its review of Hong Kong's competition policy.

3) Review of the Information Technology Professional Services Arrangement (ITPSA)

32. The ITPSA has been implemented since June 2002 to increase the competition in the bulk supply of IT professional services to Government departments. As a result, the number of contractors participating in the supply of these services has increased from 2 to 12, 5 of which being small and medium enterprises. The Office of the Government Chief Information Officer has completed the review of the ITPSA and taken account of the views of the IT industry and Government departments when drawing up the new arrangement – the Standing Offer Agreements for Quality Professional Services (SOA-QPS) – aimed at enhancing competition in the provision of IT services. The tendering exercise for the SOA-QPS was concluded in December 2005 to replace the ITPSA. The new arrangement saw an increase in the number of SOA from 23 in the original ITPSA to 40 under the SOA-QPS.

4) Relaxation on restrictions on solicitors with regard to their right to

present their clients' cases in the higher courts

33. In June 2004, the Chief Justice announced the establishment of a Working Party, chaired by Mr. Justice Bokhary, to study this issue. A consultation paper was published by the Working Party in June 2006 to seek the public's views on various issues relating to the extension of solicitors' rights of audience. The consultation period ended in August 2006. The Working Party will take into account of the views expressed during the consultation period before deciding the way forward.

5) Release of technical information in operations and maintenance (O&M) manuals by lift manufacturers

34. EMSD launched the "Guidelines on Operations and Maintenance Manuals" (the Guidelines) in March 2004, with a view to ensuring that lift maintenance contractors would have access to sufficient technical information to allow them to compete to carry out maintenance work. Since issuing the guidelines, EMSD has conducted two surveys, in mid-2005 and mid-2006 respectively. These showed that lift manufacturers and contractors were increasingly complying with the Guidelines by providing O&M Manuals for lifts. EMSD will continue to monitor the situation in the industry,.

6) New requirements for the lease of communications network areas (CNA) within a residential property

35. In order to promote competition in the provision of communications services to residential properties, the Legal Advisory & Conveyancing Office (LACO) of the Lands Department has imposed the following requirements when giving approval for leases for CNA within residential properties-

- (a) the term of the CNA lease is restricted to a maximum of three years;
and
- (b) the developer must include in relevant sales brochures for new properties the salient points of the CNA lease.

36. The LACO Revised Guidelines for Deed of Mutual Covenant (DMC) (which came into effect in April 2006) require developers to include the CNA

as part of the common area. Under the guidelines, when entering into any contract for the provision of telecommunication network services, the property management company will, have to observe the following requirements –

- (a) the term of the contract should not exceed 3 years;
- (b) the service provider should share the use of facilities and the network with other service providers; and
- (c) the owner of a property should not be required to pay for the service unless he or she is a subscriber.

5. Cases Reviewed by COMPAG

37. The following cases of alleged anti-competitive behaviour were brought to the attention of COMPAG during the period under review. We have attempted to classify these, where possible, in accordance with the types of anti-competitive conduct identified in the COMPAG guidelines. We have also indicated the extent to which, if at all, the complaints were found by the investigating authority to be substantiated.

A) Price-fixing

Case 1: Driving Lessons (prima facie case established)

38. On 8 April 2005, eleven private driving instructors' (PDI) associations called for a joint increase in fees for driving lessons. After investigation, the Environment, Transport and Works Bureau (ETWB) and the Transport Department (TD) concluded that this action represented a **prima facie case of anti-competitive conduct**, even though there had been no discernible impact on the general level of private driving lesson fees.

39. ETWB and TD found that there was sufficient competition in the driver training market between designated driving schools and PDI, and also among PDI. Besides, individual PDIs may decide on the fees they charge without endorsement or the approval of PDI associations. Such fees could vary according to the location, time and quality of training. Therefore, there is no uniform fee structure for driving lessons, making effective price-fixing difficult to achieve.

40. The PDI associations had not taken any action to compel their members to implement a joint increase in driving lesson fees. They explained that their call was intended to be an appeal to the public to recognise the hardship that the PDI trade was facing, and they were not aware of having committed anti-competitive conduct.

41. TD has explained the Government's competition policy to the PDI associations and has advised them as to action that may constitute anti-competitive conduct. To avoid any recurrence of similar incidents, TD

will continue to monitor the situation and remind the trade about the importance of fair competition during regular liaison meetings with the trade. TD will also circulate, on a regular basis, Government's guidelines on competition policy to the PDI associations.

Case 2: Freight Forwarding Industry (not substantiated)

42. On 22 August 2005, the COMPAG Secretariat received a complaint that the Hongkong Association of Freight Forwarding and Logistics Limited (HAFFA) had published on its website a "tariff" schedule "to be applied by its members". The "tariff" referred to the Airfreight Accessorial Charges and Seafreight Accessorial Charges that HAFFA members may charge for the services they render to shippers (hereafter referred to as "HAFFA charges"). The complainant argued that the HAFFA charges constituted price-fixing.

43. The Economic Development and Labour Bureau (EDLB) looked into the case and found that the charges had not been set unilaterally by HAFFA. Instead, HAFFA had consulted the Hong Kong Shippers' Council (HKSC), which is a representative body of the users of the related services, about the charges. The HKSC's views had been taken into account before a decision was made on the charges.

44. EDLB also found that the ultimate charges paid by service users were in fact subject to commercial negotiations between individual members and shippers. They were not fixed according to the "tariff schedule". The publication of the charges was only supposed to provide guidance to freight forwarders and users of HAFFA members' services.

45. To avoid further misunderstanding as to the purpose of the publication of the "tariff" schedule, HAFFA has clarified that the published charges are "for reference purposes" only and that "service users should check with their HAFFA-member service providers".

46. In light of the above findings, COMPAG noted the view of EDLB that the allegation that HAFFA had committed **anti-competitive conduct was not substantiated**.

B) Unfair or Discriminatory Standards

Case 3: Hong Kong Jewellery and Watch Fair (not substantiated)

47. On 9 September 2004, the COMPAG Secretariat received a complaint against CMP Asia Limited (CMP Asia), the organiser of the Hong Kong Jewellery and Watch Fair held at the Hong Kong Convention and Exhibition Centre on 19-23 September 2004 (the Fair). The complaint was made by 15 contractors engaged by exhibitors at the Fair, but who had not been appointed by CMP Asia. They accused CMP Asia of imposing a set of new requirements on non-CMP-appointed contractors that had the effect of restricting their access to the market, thereby distorting the normal operation of the exhibition industry.

48. The complainants alleged that under the requirements -

- Non-CMP-appointed contractors were allowed only one and a half days or one day in which to complete their setting-up work. Only one entrance gate had been provided at each exhibition hall for these contractors, which meant that they might not be able to complete the work on schedule.
- All construction materials used by non-CMP-appointed contractors were required to be checked at the move-in counters before they were allowed to be brought into the exhibition halls. Such measures reduced the working time available to contractors.
- Some non-CMP-appointed contractors were required to pay cash deposits of \$500 per square meter to the CMP-appointed contractors, who do not have contractual relationship with the former. This arrangement was deemed unfair.

49. In addition, the complainants were dissatisfied with the practice that CMP-appointed contractors would contribute to CMP a portion of their revenue derived from the Fair. They also alleged that the new requirements did not apply to CMP-appointed contractors, and argued that the requirements constituted a barrier to free trade.

50. In response to the complaint, the Commerce, Industry and

Technology Bureau (CITB) carried out an inquiry. It found that while the new requirements might have increased the compliance burden on non-CMP-appointed contractors, they were introduced for justified purposes – to improve the security, safety and efficient operation of the Fair. It also understood that the moving-in arrangement and payment of cash deposits are not uncommon in the exhibition industry.

51. CITB further remarked that the CMP-appointed contractors' practice of giving a revenue rebate to CMP should not affect the competition between CMP-appointed and non-CMP-appointed contractors. Besides, while CMP-appointed contractors were not subject to the new requirements, they were subject to stringent service conditions stipulated in their contracts with CMP Asia. CITB did not consider that non-CMP-appointed contractors were subject to more onerous control than the others.

52. In light of the above findings, **CITB did not find substantive evidence showing that CMP Asia had adopted unfair or discriminatory standards, or that market contestability or accessibility had been impaired.** COMPAG has reviewed and accepted these findings.

Case 4: Restricted Access to Residential Property (not substantiated)

53. A complainant wrote to the COMPAG Secretariat in December 2004 alleging that the management company of One Beacon Hill had prohibited workers of car washing companies from entering the property unless they belonged to the car washing company, Lifestyle Plus, designated by the management company to provide such services, or had obtained prior approval to enter the property from the management company. The complainant alleged that Lifestyle Plus was associated with the management company, and that such arrangements were against fair competition.

54. The Home Affairs Department has looked into the complaint and obtained the following information from the management company –

- Residents in the property are free to decide whether to engage the services of Lifestyle Plus or those of other car washing companies. The arrangement is a matter between individual owners and the car washing companies concerned and the relevant charges are not

included in the management fee.

- If an owner were to engage the service of a car washing company other than Lifestyle Plus, the owner could apply to the management company for permission to enter the property. A number of car washing companies engaged by individual owners had been permitted to provide car washing services at the property.
- The above 'application and approval' arrangement has been put in place for security reasons, i.e., to restrict access by non-residents to the common area of the property. The management company has not received any complaint from residents about the arrangement.

In view of the above, HAD considered **the complaint not substantiated**.

C) Abuse of Dominant Market Position

Case 5: Subscription Fees in Broadcasting Industry (not substantiated)

55. In November 2005, the Broadcasting Authority (BA) received a complaint from a member of the public on the subscription fees charged by Hong Kong Cable Television Limited (Cable TV) for provision of a general entertainment television channel. The complainant alleged that Cable TV had engaged in predatory and discriminatory pricing in breach of section 14 of the Broadcasting Ordinance (Cap. 562). The grounds for the complaint were that the collective subscription fee charged by the operator to residents of a housing estate for the provision of the channel for 12 months worked out at less than \$2 per month per household. At the same time, the same channel was offered to individual subscribers as a stand-alone premium service at \$30 per month.

56. After conducting a preliminary investigation, the BA found that **Cable TV had not breached section 14 of the Ordinance** for the following reasons –

- As the programmes in the general entertainment channel were duplicates of those in the licensee's basic service, the cost of the channel was lower than that for an "ordinary" channel. Further, the

low subscription fee was collectively offered to a housing estate. It amounted to a volume discount which could be justified in cost terms and was not predatory or discriminatory pricing;

- The channel was considered by the licensee to be a promotion channel, allowing viewers to experience the range of programmes offered by the licensee at a low cost before deciding whether to sign up for the service. Such a marketing strategy was not unique in the pay television market;
- The agreement entered into between the housing estate and the licensee was not exclusive and the duration was not excessive. The collective subscription scheme was unlikely to have a substantial foreclosing effect against competition; and
- There was no evidence that competition in the television market has been adversely affected by the promotional package.

57. In view of the foregoing, the BA found **the complaint unsubstantiated** and announced its decision on 26 January 2006.

Case 6: Supply of Drama Programme and TV Channels (not substantiated)

58. In June 2005, the Broadcasting Authority (BA) received complaints from two domestic pay television programme service licensees about an alleged exclusive arrangement between Television Broadcasts Limited (TVB) and Galaxy Satellite Broadcasting Limited (Galaxy) (now renamed as "TVB Pay Vision Limited"). The complainants alleged that –

- the supply of a drama programme "Jewel in the Palace" and four television channels on an exclusive basis by TVB to Galaxy was in breach of the prohibition on anti-competitive conduct under section 13 of the Broadcasting Ordinance (Cap.562) (BO); and
- in view of TVB's dominance in the free television market and the Cantonese content market, the conduct constituted an abuse of its dominant position and a breach of section 14 of the BO.

59. After conducting a preliminary enquiry, the BA concluded in August 2005 that **the conduct of TVB and Galaxy neither had the purpose or effect of preventing, distorting or substantially restricting competition, nor constituted to an abuse of dominant position in any television programme service market.** The main reasons for the BA's decision are as follows –

- Exclusivity is a commonly accepted commercial practice in the broadcasting sector. The test is whether the cumulative effect of the exclusive agreements entered into between content providers and a broadcaster constitutes substantial foreclosure in any upstream markets for the broadcasting rights which might have the anti-competitive effect in a downstream television programme service market. The amount of the exclusive content at issue was insignificant, i.e., no more than four Cantonese channels in relation to a pool of nearly 200 channels, out of which 42 were Cantonese channels, available to viewers in the local pay TV market, and the drama programme affected only approximately 54 hours of television programming. There is a wide range of alternative content available for other operators to acquire and include in their services. The BA noted that the other pay television operators had exclusive rights to premium sports and movie programming; and
- While TVB might be presumed dominant in the free television market, there is no evidence to support the view that the exclusivity arrangement has given Galaxy a significant competitive advantage over other pay television operators. Galaxy has a relatively modest position as a competitor for subscribers against the other established operators.

60. With regard to the supply of Cantonese content, no case has been made that TVB's conduct would result in foreclosure of the supply of Cantonese content in the pay television market. The BA noted that a range of alternative Cantonese content was being offered by other operators in the pay television market.

Case 7: Securities Business (not substantiated)

61. At a regular meeting with the Financial Services Branch (FSB) of the

Financial Services and the Treasury Bureau on 27 October 2005, the Hong Kong Stockbrokers Association expressed its concern that banks were engaging in anti-competitive behaviour when conducting securities related business. Such behaviour included charging zero commission and low interest rates for IPO related activities to new securities clients. On 11 November 2005, Hon Chim Pui-chung together with a number of brokers' associations and some 100 brokerages placed a full-page advertisement in three local Chinese language newspapers expressing their discontent at alleged unfair competition from banks, the charging of zero commission by the banks and the dual regulatory standards applied to banks and brokers.

62. In response to these concerns, FSB sought the views of the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) on the allegations by the brokers. Both the SFC and the HKMA were of the view that the Securities and Futures Ordinance provides a level-playing field and does not give banks any unfair advantage over brokers in conducting securities related business. Under the Ordinance, banks and brokers are governed by the same rules and regulations and subject to the same disciplinary sanctions.

63. Furthermore, the SFC did not consider it unfair competition for banks to launch promotional offers. Competition on commission fees exists not only between banks and brokers, but also among brokers themselves. Such competition can provide investors with more choices and benefits.

64. In light of the above considerations, FSB concluded that **the allegation that banks were engaging in anti-competitive conduct was unsubstantiated.**

Case 8: Government Electronic Trading Services (GETS) Market (partially substantiated)

65. Global e-Trading Services Limited (Ge-TS) lodged two complaints against Tradelink Electronic Commerce Limited (Tradelink) on 23 March and 26 August 2005 respectively about alleged anti-competitive conduct in the GETS market. There were three major allegations in the complaints -

- (a) Ge-TS alleged that Tradelink's exclusive agreements with Government Approved Certification Organisations (GACO Contracts) prevented the GACOs from cooperating with other GETS service providers and allowed Tradelink to maintain its monopoly in the provision of the Certificate of Origin (CO) service;
- (b) Ge-TS alleged that Tradelink sought to maintain its dominant share in the GETS market by offering low prices selectively to companies which were Ge-TS' marketing targets, while charging companies that were not such targets a much higher price. It also alleged that Tradelink locked in major traders by virtue of the exclusive contracts it held for Dutiable Commodities Permits (DCP) and Import and Export Declaration (TDEC) services; and
- (c) Ge-TS alleged that Tradelink attempted to maintain its monopoly in the GETS market after 2004 by soliciting the withdrawal of the bid by OnePort GETS Ltd and the withdrawal of GACOs from GACOLink Limited in the 2002 GETS tender exercise.

66. On the first allegation, CITB found that certain provisions in the agreements between Tradelink and GACOs **appear to have the effect of fettering the statutory functions of GACOs and restraining competition in the provision of CO services.** Hence, it reminded GACOs of their statutory duties under the Protection of Non-Government Certificates of Origin Ordinance (Cap 324) and wrote to Tradelink, asking it to procure appropriate amendments to the GACO Contracts. Tradelink took action to clarify and rectify the GACO Contracts with respect to CO services.

67. CITB found no prima facie evidence to substantiate the second and third allegations, on the basis of the information made available to the Government. On the second allegation, CITB has nonetheless decided to commission an economic analysis of the impact that Tradelink's contracts with some of its customers may have on competition in the GETS market in relation to the provision of TDEC and DCP services.

68. CITB has informed the service providers of the above findings, and will revert to COMPAG on the findings of the economic analysis. The Government will also examine whether there is room for further improving the regulatory framework in the forthcoming review of the operation of the GETS market beyond 2008.

D) Monopolies

Case 9: LPG Supply at Discovery Bay (not substantiated)

69. A member of the Islands District Council (IDC) expressed concern about the lack of competition for the supply of piped LPG at Discovery Bay and raised the issue for discussion at the IDC meeting on 22 August 2005. The IDC member considered that –

- The retail price of piped LPG at Discovery Bay is higher than that in other areas of the Islands District because the supplier (ExxonMobil) pays extra costs to the developer of the area in the form of a “supply right premium” and a “berthing fee”; and
- The supply of piped LPG is monopolized by a single supplier.

70. The Economic Development Branch of the Economic Development and Labour Bureau has looked into this case and has concluded that the supply of energy at Discovery Bay **does not raise concerns from a competition angle**, bearing in mind that–

- In line with free market principles, the retail prices of LPG in Hong Kong are determined by individual oil companies having regard to, amongst other things, their operating costs and international oil prices. The retail price of LPG varies depending on factors such as the supplier and the size and location of clientele;
- ExxonMobil obtained the contract to supply piped LPG to Discovery Bay through open tender - the supply right premium payment was offered by ExxonMobil as part of their bid package; and

- Piped LPG is not the sole source of energy at Discovery Bay. Residents can choose alternative sources of energy such as electricity.

E) Government Policies and Practices

Case 10: Rail Merger and Transport Policy (not substantiated)

71. On 18 April 2006, the COMPAG Secretariat received a complaint from the Taxi and Public Light Buses Concern Group (the Concern Group) alleging that:

- the proposed merger of the MTR and KCR systems was undesirable and would create a monopoly that would be difficult to monitor; and
- the current transport policy, together with the existence of illegal transport services, hampered the business opportunities of certain public transport modes.

72. The Environmental, Transport and Works Bureau (ETWB) has reviewed these complaints.

73. According to ETWB, despite being the sole railway operator, the post-merger corporation will still face competition from other public transport operators, such as franchised buses and public light buses. The corporation will be regulated under both the relevant legislation and an operating agreement specifying the service and safety standards of its operation. As regards rail fares, an objective and transparent fare adjustment mechanism based on a formula linked to the consumer price index, a wage index and a productivity factor will be introduced to replace fare autonomy. The merger will **not lead to lessening of competition**.

74. ETWB has further noted that the Government's transport policy is to develop the mass carriers, i.e., railways and franchised buses, as the major transport service providers. Other transport modes, including public light buses (which include green minibuses buses and red minibuses), non-franchised buses and taxis, perform a supplementary role in the public transport system. When a new railway is commissioned, the Government will take measures to assist affected transport modes cope with the change in

travel demand and patterns. Between 2001 and 2005, the market shares of public light buses and taxis remained stable in spite of the commissioning of several new railways during that period. Furthermore, the Government has taken strict enforcement action against illegal transport service providers. Such measures have helped to prevent illegal transport services from hampering the business opportunities of other public transport operators.

75. Taking account of the views expressed by ETWB, COMPAG concluded that **the complaints of the Concern Group were not substantiated.**

Case 11: Tenders for Road Maintenance Contracts (not substantiated)

76. It is Highways Department (HyD) policy to set a limit on the number of road maintenance contracts which any single contractor may take up. The restriction is imposed for public safety reasons, namely, to ensure that an adequate number of back-up contractors is available to provide emergency services in the event of default by a road maintenance contractor.

77. In 2004, HyD embarked on a regrouping exercise whereby the total number of road maintenance contracts would eventually be reduced from 12 to 6 over a number of years. As a result, the limit on the number of contracts that any single contractor may concurrently hold would initially be reduced from 4 to 3. This change was announced in the context of a tender exercise that took place at the end of 2004 and the change took effect starting from another tender exercise at the end 2005.

78. Company A complained to HyD in September 2005 that the change in arrangements had unfairly put the company at a disadvantage. It argued that had it not been for the change in arrangements, the company would have been allowed to take part in the tendering exercise at the end 2005. It alleged that the reduced limit restricted fair and open competition among contractors, and would deprive the public of good quality services provided by contractors who had previously performed well.

79. Having reviewed the case, HyD has concluded that **the complaint is unsubstantiated** for the following reasons –

- While prima facie, limiting the number of contracts which could be held by any one contractor may have the effect of reducing the number of bidders and thereby restricting competition, it is a long held and well accepted policy established in the interest of public safety. Despite the limit, the market is still accessible to interested contractors with suitable qualifications; and
- Both the previous and new limits on the number of maintenance contracts that may be held by one contractor are equally applicable to all parties. The change of policy was also clearly announced well ahead and drawn to the notice of prospective tenderers to allow them ample opportunity to cope with the change.

80. HyD explained its policy in a meeting with the complainant on 9 December 2005 and the latter indicated that it would not pursue the matter further.

Case 12: PABX System Tenders (not substantiated)

81. A PABX service provider wrote to the COMPAG Secretariat in December 2005 complaining about the way in which the Electrical and Mechanical Services Department (EMSD) conducts tenders. Among other issues, the PABX service provider complained that there was inadequate explanation regarding the acceptance of conforming bids. The Environment, Works and Transport and Works Bureau considered that **the allegation in made by the complainant was not substantiated** as EMSD had made it clear that in evaluating tenders it normally chooses the lowest conforming bid or the conforming bid with the highest score where a marking scheme applies. In the latter case, a full set of criteria is specified in the tender documents to ensure fairness and transparency.

Case 13: Government's Investment in Digital Trade and Transportation Network Ltd (DTTNC) (under investigation)

82. On 16 January 2006, the COMPAG Secretariat received a complaint from Global e-Trading Services Limited (Ge-TS) about the Government's equity investment in DTTNC. Ge-TS claimed that this investment would

aggravate the unfair situation created by Tradelink and deliver a message to the market that the Government is biased in favour of DTTNCo as the selection process through which Tradelink was chosen to develop and operate the DTTN service was unfair and lacked transparency. Ge-TS alleged that Tradelink used the “intended” Government investment in DTTNCo as a marketing tool to create a competitive advantage for Tradelink’s business.

83. On 14 February 2006, Ge-TS wrote again to the COMPAG Secretariat, repeating this view, adding that –

- (a) the selection process through which Tradelink was chosen to develop and operate the DTTN service was unfair and lacked transparency;
- (b) the perceived bias of the Government towards DTTNCo would discourage further private sector investment in developing the DTTN service; and
- (c) the Government should implement an asymmetric regulatory regime for the DTTN market, similar to the current regulations implemented by OFTA to foster market competition.

84. The Economic Development and Labour Bureau is looking into the complaint.

F) Joint Boycott

Case 14: Wedding Expos (under investigation)

85. A complaint was lodged by Ching Hua Bridal Art Co. Ltd. to COMPAG on 21 February 2006 against two local wedding expo companies, the Audace International Fairs Ltd. (Audace) and the Hong Kong-Asia Exhibition (Holdings) Ltd. (HK-Asia), alleging that the companies had –

- refused to allow the complainant to participate in their exhibitions held on several occasions in 2005 and 2006 in the Hong Kong Convention and Exhibition Centre (HKCEC); and

- introduced measures to restrict companies from offering certain wedding related services at the exhibition venue.

86. The complainant noted that Audace and HK-Asia are the only two companies designated by HKCEC to organise wedding expos, and argued that their practices amounted to collusion and abuse of a monopoly position. The complainant also alleged that the anti-competitive conduct of these companies would jeopardise the free development of the wedding dress market and adversely affect the interests of consumers.

87. The complaint has been referred to the Commerce, Industry and Technology Bureau (CITB) for investigation. CITB is seeking further information from the complainant, HKCEC and the two expo organisers.

G) COMPAG-initiated Studies

Case 15: “One Licence for One Shop” and Importation of Chilled Pork from Mainland

88. In early 2004, the Food and Environmental Hygiene Department (FEHD) began discussion with the State General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) about a mechanism for importing chilled pork into Hong Kong. Having conducted a number of inspections of chilled pork processing plants in Guangdong, FEHD concluded that the supply of pork from certain plants could be accepted.

89. The Legislative Council Panel on Food Safety and Environment Hygiene (LegCo FSEH Panel) and the meat trade expressed concern about unscrupulous traders selling chilled meat under the pretence that it was fresh meat. To address this concern, the Panel proposed that the sale of fresh and chilled meat on the same premises be prohibited (the so-called “one licence for one shop” proposal) before the importation of chilled pork from the Mainland began.

90. Having considered the food hygiene requirements as well as the concerns of the Panel and the meat trade, the Health, Welfare and Food Bureau (HWFB) and FEHD considered it practicable to prohibit the sale of

fresh beef, mutton or pork and chilled beef, mutton or pork in the same fresh provision shop (FPS) (including supermarket) or market stall by amending the Food Business Regulation (Cap. 132 sub leg). However, to maintain the existing level of convenience to consumers, HWFB and FEHD also introduced an exemption mechanism under which FPS and market stalls could be exempted from the new requirement on condition that the chilled beef mutton or pork offered for sale has been pre-packaged and properly labeled before distribution to retail outlets.

91. At a LegCo FSEH Panel meeting, the Consumer Council suggested that, if only a few operators were likely to be exempted from the new requirement, the Government should undertake a study to ascertain whether or not the market position of the supermarket chains would be further strengthened to the detriment of fair market competition. In response to the Council's concern, HWFB indicate that the exemption would apply equally to all operators provided that the packaging and labelling conditions were met. Such an approach would not favour or unfairly disadvantage any market player.

92. COMPAG noted that from the competition angle, the importation of chilled pork from the Mainland should be a positive development, as it would enhance the diversity of sources of meat supply and provide consumers with more choices.

Case 16: Voluntary Surrender Scheme for Pig Farmers

93. To address the various environmental pollution problems and public health threats (such as Japanese encephalitis) caused by pig farming in Hong Kong, and in response to the request of the majority of local pig farmers, the Government introduced on 1 June 2006 an incentive package for pig farmers who do not wish to continue to operate under an increasingly stringent regulatory regime to surrender their licences and cease operation permanently.

94. HWFB has assessed the impact of the exercise on competition in the pork supply market. Some 52.5% of pork consumed in Hong Kong in 2005 was from freshly slaughtered pigs. The remaining market share was

captured by frozen and chilled pork. In the past three years, local farms have supplied 17.7% of the live pigs consumed in Hong Kong while the remaining demand was met by live pigs imported from the Mainland. Local farms, therefore supplied only 9.3% of the total pork consumption in 2005.

95. The Government estimates that between under the scheme, 60% and 70% of local pig farmers will choose to cease operation permanently. This will lead to a gradual reduction in the supply of live pigs from local farms. However, the supply of live pigs from the Mainland is expected to fill the gap and, as a result, the price of fresh pork is predicted to be unaffected by the scheme.

96. As a result of a gradual scaling down of local pig farming, there may be concern about insufficient competition and increasing dominance of Ng Fung Hong (五豐行) in the pork market. However, competition in the market is expected to be maintained as there will still be a wide range of close substitutes to fresh pork. Among them, the chilled pork from the Mainland, which started to import to Hong Kong from late August 2006, is widely regarded as a keen competitor of fresh pork. In addition, HWFB will discuss with Mainland authorities the feasibility of opening up the live pig market.

97. In view of the above, COMPAG believes that the introduction of the voluntary licence surrender scheme for local pig farmers will not have a significant long-term impact on the competition in the local pork market.

6. Education and Promotion

98. Apart from handling competition-related complaints and initiating studies into competition in certain areas, COMPAG also promotes awareness of the benefits of competition.

99. At the school level, COMPAG and the Education and Manpower Bureau have cooperated to prepare a module on competition concepts that has been incorporated into the curriculum of Integrated Humanity (IH) studies for senior secondary school students (Form 4 and 5) since 2004. Feedback from teachers about the new module suggests that this is useful in enhancing students' awareness and knowledge of anti-competitive practices and the adverse impact such practices might have on the economy and society in general. COMPAG Secretariat staff have briefed teachers and curriculum development officers of primary schools on the Government's competition policy and on competition concepts in order to enhance their ability to promote these concepts in their schools.

100. In June 2004, in partnership with Hong Kong Education City COMPAG produced an online interactive game aimed at promoting among students an understanding of anti-competitive practices. COMPAG has also produced CD-ROM versions of this game, which have been distributed to all primary schools in Hong Kong.

101. At the corporate level, COMPAG has issued its 2003 Guidelines on competition to 300 trade associations and industry organizations, in order to raise their awareness of competition issues and seek their support in encouraging their members to adhere to the Guidelines.

102. COMPAG will continue to monitor the effectiveness of the above education and promotion programmes and refine them in line with feedback received from stakeholders.

7. Interface with International Organisations

1) Asia-Pacific Economic Co-operation (APEC)

103. At APEC, discussions on competition policy continue to focus on collaborative efforts with the Organisation for Economic Co-operation and Development (OECD). These have led to the endorsement of the APEC-OECD Integrated Checklist on Regulatory Reform (the Checklist) by the meeting of the APEC Ministers Responsible for Trade in June 2005 and by the APEC Ministerial Meeting in November 2005. The Checklist provides a tool to assist member economies in assessing their respective regulatory reform efforts by highlighting the key issues that should be attended to in the process. The APEC Economic Committee is supervising a self-assessment by some member economies using the Checklist.

104. The annual Competition Policy and Deregulation Group (CPDG) meeting in February 2006 provided a forum for deliberations on competition policy and deregulation issues, and on practical ways to take forward the APEC Principles to Enhance Competition and Regulatory Reform.

105. Hong Kong has updated its Individual Action Plan, which includes reference to the review of our competition policy and to reforms to the regulatory structure of the broadcasting and telecommunications industries.

106. The HKSAR Government sent two representatives to attend the 2nd APEC Training Course on Competition Policy held on 8 – 10 August 2006 in Bangkok, Thailand. The training course was conducted by the Government of Thailand (Department of Internal Trade, Ministry of Commerce) with the support of the Government of Japan (Japan Fair Trade Commission).

2) World Trade Organization (WTO)

107. The fifth Trade Policy Review of Hong Kong, China is scheduled for 13 and 15 December 2006. The trade policy review takes place once every four years and is conducted on the basis of an independent report prepared by the Secretariat of WTO and a policy statement by the HKSAR Government detailing the economic and trade environment, trade policies and practices as

well as latest developments in Hong Kong. COMPAG has contributed to the preparation of the Secretariat report and the HKSARG policy statement by providing input on the latest developments in competition policy in Hong Kong (including the review by the Competition Policy Review Committee and the upcoming public consultation on the way forward for competition policy). It has also highlighted the Government's continued efforts to promote competition.

3) International Monetary Fund (IMF)

108. In its Staff Report for the 2005 IMF Article IV Consultation for Hong Kong, the IMF noted that Hong Kong has one of the world's most open and flexible economies. It acknowledged that in recent years, there have been calls to promote domestic competition in some sectors in Hong Kong. In this regard, the IMF welcomed the move to set up an independent committee (the Competition Policy Review Committee) to look into the existing competition policy, including the need for a general competition law.