

競爭政策諮詢委員會工作報告

COMPAG

Competition Policy Advisory Group Report

2024

(English version)

1. Introduction

Background

The Competition Policy Advisory Group (“COMPAG”) was established in December 1997 to provide a dedicated forum for examining, reviewing and advising on competition-related issues. COMPAG aimed to promote the Government’s policy on enhancing economic efficiency and the free flow of trade through sustainable competition in Hong Kong, thereby bringing benefits to both consumers and the business sector.

2. In 2005, COMPAG appointed the Competition Policy Review Committee (“CPRC”) to review and make recommendations on the future direction for competition policy in Hong Kong. In its report submitted to COMPAG in June 2006, CPRC recommended that a new cross-sector competition law be introduced.

3. Backed by wide public support received in two public consultation exercises conducted in 2006 and 2008, the Government introduced the Competition Bill into the Legislative Council in July 2010. The Bill was passed in June 2012 and became the Competition Ordinance (Cap. 619) (“the Ordinance”), which fully commenced operation on 14 December 2015.

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

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

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

6. COMPAG, on the other hand, handles complaints on –

- (a) anti-competitive conduct against government entities and bodies or persons that are not subject to the competition rules and enforcement provisions of the Ordinance; and
- (b) non-compliance with conditions and limitations imposed by the Chief Executive in Council ("CE-in-C") on agreements, conduct and mergers exempted by CE-in-C under the Ordinance².

¹ An 'undertaking' is defined as any entity, regardless of its legal status or the way in which it is financed, engaged in economic activity and includes a natural person engaged in economic activity.

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

2. Work of COMPAG in 2024

7. In 2024, COMPAG handled four cases with details as follows –

(A) Cases concerning Government Policies and Practices

Case 1: Complaint about driving test appointments at a designated driving school (case closed)

8. The complainant alleged that a designated driving school (“DDS”) in Sha Tin was open to only its students for driving tests, and that in order to take driving tests in the Sha Tin district, learner drivers who took lessons with private driving instructors (“PDIs”) had to make driving test appointments through the DDS. The complainant was also of the view that the DDS had made enrolment in its expensive driving courses a prerequisite for making driving test appointments in the district, and considered this barrier imposed by the DDS unfair to PDIs and private driving learners who wished to take driving tests in the district. The complainant accused the DDS of undermining competition.

9. The Transport and Logistics Bureau (“TLB”) has provided information about the case. COMPAG noted TLB’s clarification that there was no mandatory requirement for any candidate to make a driving test application or appointment through DDS or any other third parties as the Transport Department (“TD”) was the sole authority for administering driving tests. COMPAG also noted that driving test applicants who received training from PDIs were free to choose their preferred test regions and would be assigned to a designated test centre (“DTC”) according to their region preferences indicated, while DTCs located within DDSes were only for driving school candidates under the “two-pronged approach” for driving training, which was justified based on traffic considerations. TD also confirmed the adoption of uniform and open assessment standards at different DTCs for all candidates, regardless of how they were trained and where they took their driving tests.

10. COMPAG considers that TD’s arrangements of administering driving test appointments contains no clear and identifiable subject matter directly relating to competition, and therefore decided that no investigation be undertaken. For the part of the complaint about the DDS’ conduct alleged to have undermined competition, COMPAG has referred the case to Competition Commission for follow-up as appropriate.

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

Case 2: Complaint about the Hong Kong Science and Technology Parks Corporation's lease of land to data centre operators (case closed)

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

12. The Innovation, Technology and Industry Bureau ("ITIB") advised that the matters under complaint, which had been subject to an intervening judicial review ("JR"), were addressed by HKSTPC upon conclusion of the JR in 2023. COMPAG noted that HKSTPC had reconsidered and been taking follow-up actions against concerned lessees that breached relevant lease restrictions, and further conducted a general review to ensure ongoing compliance. Separately, the issues on rental level and transfer of ownership were overtaken by new policies being put in place by HKSTPC to address the complainant's concerns.

13. As the matters under complaint have been overtaken by subsequent developments, COMPAG does not consider it necessary to further follow up on the case.

Case 3: Complaint about the Hong Kong Tourism Board's subsidies to the Travel Industry Council of Hong Kong (under processing)

14. The complainant alleged that the Hong Kong Tourism Board ("HKTb") had given subsidies or an unfair advantage to the Travel Industry Council of Hong Kong ("TICHK"), but not other organisations such as that of the complainant's, for organising training courses for tourist guides. The complainant opined that TICHK was no longer a "public body" since 1 September 2022 when its regulatory functions were taken over by the Travel Industry Authority, an independent statutory body, and thus should no longer receive HKTb's subsidies for organising training courses for tourist guides.

15. The Culture, Sports and Tourism Bureau has provided information about the case, which will be considered by COMPAG in due course.

Case 4: Complaint about the Hospital Authority's drug ordering mechanism under the General Outpatient Clinic Public-Private Partnership Programme (under processing)

16. The complainant alleged that the Hospital Authority ("HA") allowed private doctors participating in the General Outpatient Clinic Public-Private Partnership Programme ("Programme") to order drugs on the HA Drug Formulary at a preferential price but there were no measures to prevent doctors from providing those drugs to non-subsidised patients outside of the Programme and the mechanism of administering quota for drugs to be ordered also did not take into account the number and conditions of subsidised patients to be seen by doctors under the Programme. The complainant opined that as the markets for the HA and private doctors were different (viz. the HA could enjoy much lower unit price given its bulk purchase as the largest public hospital service provider), the drug ordering arrangements under the Programme would distort competition in the market.

17. The COMPAG Secretariat is seeking information from the Health Bureau about the case, which will be considered by COMPAG in due course.

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