

競爭政策諮詢委員會工作報告

COMPAG

Competition Policy Advisory Group Report

2018

(English version)

1. Introduction

Background

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

2. In May 1998, COMPAG issued the Statement on Competition Policy, setting out the objective of the Government’s competition policy. To supplement the Statement and advise businesses across sectors on typical types of anti-competitive conduct and activities, COMPAG further published a set of guidelines in 2003.

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

4. The Government launched in November 2006 a public consultation on the introduction of a cross-sector competition law, and in May 2008 conducted a further public consultation on the detailed proposals for the competition law.

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

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

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

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

8. COMPAG, on the other hand, handles complaints on –
- (a) anti-competitive conduct against government entities and bodies or persons which are not subject to the competition rules and enforcement provisions of the Ordinance; and
 - (b) non-compliance with conditions and limitations imposed on agreement, conduct and merger exempted by the Ordinance.

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. Work of COMPAG in 2018

9. In 2018, COMPAG handled 12 cases with details as follows -

(A) Cases concerning Government Policies and Practices

Case 1: Complaint about a tender requirement imposed by the Leisure and Cultural Services Department in relation to printing services (under investigation)

10. The complainant pointed out that one of the tender requirements imposed by the Leisure and Cultural Services Department ("LCSD") was for potential suppliers of printing services to submit their quotations together with a list of 20 priced books with more than 200 pages each printed by them. The complainant alleged that the requirement was arbitrary and unduly narrowed competition for the tender.

11. The case has been referred to the Home Affairs Bureau for investigation. The outcome of the investigation will be considered by COMPAG in due course.

Cases 2-3: Complaints about the Transport Department's issuance of licences for the provision of Residents' Services and Student Services by non-franchised buses (under investigation)

12. There are two complaints concerning the provision of Residents' Services and Student Service by non-franchised buses. In the first complaint, the complainant alleged that partly because of the refusal of the Transport Department ("TD") to issue new licences to new entrants of non-franchised buses to operate residents' services, the number of companies eligible to bid for the right to operate residents' services for a particular residential estate was reduced, leading to higher fares. In the second complaint, the complainant alleged that as the number of licences for non-franchised buses to operate student service was limited, one student service provider dominated the market and the fare charged by that particular provider was high but its service quality was poor.

13. The cases have been referred to the Transport and Housing Bureau ("THB") for investigation. The outcome of the investigation will be considered by COMPAG in due course.

Case 4: Complaint about the procurement policy of the Social Welfare Department on on-site pre-school rehabilitation services (under investigation)

14. The complainant alleged that under the policy of the Social Welfare Department, only non-government organisations (“NGOs”) were invited to submit tenders for the provision of on-site pre-school rehabilitation services, and non-NGOs (e.g. small and medium enterprises in private practice) were not invited to participate in the tendering process.

15. The case has been referred to the Labour and Welfare Bureau for investigation. The outcome of the investigation will be considered by COMPAG in due course.

Cases 5-7: Complaints about the TD favouring franchised buses over non-franchised buses (under investigation)

16. There are three cases involving TD allegedly favouring franchised buses over non-franchised buses. In the first case, the complainant alleged that TD had rejected an application from a non-franchised bus operator to increase the frequency of its services on an existing route, but approved, several months later, a franchised bus operator’s proposal to begin running a new service on a similar route.

17. In the second case, the complainant alleged that TD engaged The Kowloon Motor Bus Company (1933) Limited (“KMB”) to provide franchised bus service while cancelling the residents’ service which charged a lower fare than KMB.

18. In the third case, the complainant alleged that TD reduced the frequency of the shuttle bus service for a residential estate on the ground that the service overlapped with that provided by KMB.

19. The cases have been referred to THB for investigation. The outcome of the investigation will be considered by COMPAG in due course.

Case 8: Complaint about tender requirements imposed by the LCSD in relation to catering services (under investigation)

20. The complaint alleged that some clauses in the tender documents issued by the LCSD for catering services, concerning “restrictions on quotation” and “termination”, were unfair and unreasonable.

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

Case 9: Complaint about the Education Bureau's policy regarding student visas (case closed)

22. The complainant alleged that under the existing policy, a student visa application would be approved only if the overseas applicant was enrolled in a course provided by any of the eight University Grants Committee ("UGC")-funded universities in Hong Kong. The complainant was concerned that such a policy would unduly restrict competition for providing education services to international students in Hong Kong.

23. The COMPAG Secretariat has invited the Education Bureau ("EDB") to look into the case. EDB advised that, apart from the eight UGC-funded universities, applications from those enrolling in self-financing institutions and non-UGC funded institutions would also be favourably considered, subject to certain conditions being met. COMPAG considered that the complaint was based on incorrect information or misunderstanding, and decided that no further investigation should be made.

Case 10: Complaint about a tender requirement imposed by the Southern District Office of the Home Affairs Department in relation to festive lighting services (case closed)

24. The complainant pointed out that in a tender document issued by the Southern District Office ("SDO") for design and installation of festive and decorative lighting, bidders were required to meet a certain level of company asset value or monthly cash balance. The complainant considered the requirement unfair and anti-competitive.

25. Subsequently, the tender was cancelled due to the request by Southern District Council members to add an extra location for festive lighting. In view of the need to re-issue the tender to accommodate the request, SDO took the opportunity to remove the tender requirement in question.

26. As the matter under complaint has been overtaken by subsequent developments, COMPAG considered that no further follow-up was necessary. The case is therefore closed.

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

Case 11: Complaint about a contractual requirement of the Hong Kong Housing Society in relation to the Senior Citizen Residence Scheme (under investigation)

27. The complainant alleged that the contractual requirement for tenants of Senior Citizen Residence Scheme to procure the Basic Care Services provided by the Hong Kong Housing Society might constitute anti-competitive tying and bundling.

28. The case has been referred to THB for investigation. The outcome of the investigation will be considered by COMPAG in due course.

Case 12: Complaint about the policy of the Radiation Board on disposal of exit signs containing tritium (case closed)

29. The complainant alleged that under the policy of the Radiation Board, disused exit signs containing tritium must be collected and disposed of by the original manufacturers of the signs. The complainant alleged that the policy in effect foreclosed the market for the collection and disposal of disused tritium exit signs and allowed any person who manufactured these signs to charge monopoly prices for the removal and disposal of such signs.

30. After the COMPAG Secretariat referred the case to the Food and Health Bureau ("FHB") for investigation, the Radiation Board has updated the relevant policy in view of the latest recommendations of the International Atomic Energy Agency ("IAEA").

31. The IAEA's latest recommendation on disused sealed radioactive sources is that such sources may be returned to the original or alternative supplier/manufacturer. The Radiation Board has therefore updated the licensing condition on the disposal of sealed radioactive substances (including tritium exit signs) by their end-users to the effect that, while the waste sealed radioactive substances shall be returned to the original supplier/manufacturer as far as possible, the end-user licensees can, with prior written approval by the Board, return such substances to alternative suppliers/manufacturers of the same type of sealed radioactive substances.

32. As the matter under complaint has been overtaken by the change in the Radiation Board's policy, the case is closed.

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