

競爭政策諮詢委員會工作報告

COMPAG

Competition Policy Advisory Group Report

2019

(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 conducted in May 2008 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 2019

9. In 2019, COMPAG handled 11 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 (case closed)

10. The complainant raised in 2016 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. Subsequent to the introduction of a pro-innovation procurement policy to facilitate the participation of startups and small and medium enterprises in Government procurement in April 2019, LCSD relaxed the relevant tender requirement such that potential suppliers are no longer required to provide the concerned list nor any book sample.

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

Case 2: Complaint about tender requirements imposed by LCSD in relation to grant of catering permits (case closed)

13. The complainant alleged that two clauses in the tender documents issued by LCSD relating to the grant of catering permits, concerning "restrictions on quotation" and "termination", were unfair and unreasonable. The first clause in question prohibited a bidder from communicating, making arrangement or colluding with other parties in relation to his quotation; while the second clause provided that if a permit holder had successfully terminated a contract early, any tender/quotation offer from the same permit holder or a "related person" of that permit holder (which includes the spouse, parent, child, brother or sister of the permit holder) for a contract immediately replacing the terminated contract would be rejected.

14. LCSD has provided information on the case. As the two clauses serve to prevent anti-competitive conduct in the form of bid-rigging and to safeguard Government revenue in view of prevalent malpractices respectively, COMPAG did not consider the clauses anti-competitive. As the case contained no clear and identifiable subject matter relating directly to competition, COMPAG decided that no further investigation be made.

Case 3: Complaint about the Social Welfare Department's invitation for proposals for on-site pre-school rehabilitation services (under investigation)

15. The complainant alleged that the Social Welfare Department only invited non-government organisations ("NGOs") to submit proposals for the provision of on-site pre-school rehabilitation services, and private operators (e.g. small and medium enterprises) were not invited to participate in the tendering process.

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

Cases 4-5: Complaints about the Transport Department's issuance of licences for the provision of residents' services and student services by non-franchised buses (under investigation)

17. There are two complaints concerning respectively the provision of residents' services and student services 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 services 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.

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

Cases 6-8: Complaints about TD favouring franchised buses over non-franchised buses (under investigation)

19. 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 several months later approved a franchised bus operator's proposal to run a new service on a similar route.

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

21. 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.

22. The cases have been referred to THB for investigation. The outcome of the investigation will be considered by COMPAG.

Case 9: Complaint about the monopolisation of the training market for the Mandatory Competence Test of the Motorcycle Driving Test as a result of TD and the Lands Department (LandsD)'s tendering of designated driving school sites (under investigation)

23. The complainant alleged that a particular company and its subsidiaries have monopolised the market for providing training for the Mandatory Competence Test ("MCT") of the Motorcycle Driving Test, as a result of TD and LandsD's decision to award the tenders for all designated driving school sites to that company or its subsidiaries. The complainant also alleged that the company had since then engaged in certain malpractices in relation to the MCT training.

24. The case has been referred to THB for investigation. The outcome of the investigation will be considered by COMPAG.

Case 10: Complaint about the exclusive right of a developer to provide transportation services for a residential area (under investigation)

25. The complainant pointed out that the developer of a residential area had been given exclusive right to provide certain transportation services for the area, and alleged that the arrangements might give rise to competition concerns as other service providers were unable to compete for the provision of the services concerned.

26. The COMPAG Secretariat is seeking information from THB about the case, which will be considered by COMPAG.

(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 Residences Scheme (under investigation)

27. The complainant alleged that the contractual requirement for tenants of the Senior Citizen Residences 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.

** ** ** ** ** ** ** ** ** ** ** ** **