

競爭政策諮詢委員會工作報告

COMPAG

Competition Policy Advisory Group Report

2020

(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 different 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 2020

9. In 2020, COMPAG handled 15 cases with details as follows –

(A) Cases concerning Government Policies and Practices

Case 1: Complaint about the Social Welfare Department's invitation for proposals for on-site pre-school rehabilitation services (case closed)

10. The complainant alleged that the Social Welfare Department (“SWD”) only invited non-government organisations (“NGOs”) to submit proposals for the provision of on-site pre-school rehabilitation services (“OPRS”), and private operators (e.g. small and medium enterprises) were not invited to participate in the tendering process. The Labour and Welfare Bureau (“LWB”) has investigated the case.

11. COMPAG has considered the complainant’s competition concerns arising from SWD’s arrangement of inviting only its subvented NGOs to submit proposals for the provision of OPRS, and also LWB’s investigation findings and assessment as follows –

- (a) when deciding on the approach for identifying operators for welfare services, the Government has to consider a host of important factors, including (1) quality of services; (2) fulfilment of any international obligations; (3) responses of various stakeholders; (4) availability of services in the private sector; and (5) implications on the long term development of the relevant service sector. The competition angle is taken into account, while not as the sole determinant factor;
- (b) for specialised welfare and care services for vulnerable groups, it is very important to identify reliable service providers so that service quality and consistency can be assured;
- (c) for pre-school children with special needs, they are vulnerable and rehabilitation services for them would require professional skills and expertise to ensure the provision of safe care and appropriate training for and effective management of the children concerned. The relevant experience and stability of service providers are therefore highly essential;
- (d) for OPRS specifically formulated to cater for the rehabilitation needs of pre-school children with special needs, SWD has noted that a number of NGOs are already implementing experimental service programmes in collaboration with kindergartens/kindergarten-cum-child care centres, while the provision of similar private services is limited. Inviting subvented NGOs (with extensive network and proven track record in operating pre-school rehabilitation services) to submit proposals for the provision of OPRS can provide solid evidence of their experience and

performance, thereby facilitating service monitoring and quality assurance. Such invitation is in accordance with the Lump Sum Grant policy and quality-based allocation system for welfare services implemented since 2001. This partnership between the Government and the non-profit sector is also important to empowering the provision of welfare services; and

- (e) the World Trade Organization Agreement on Government Procurement, to which Hong Kong is a party, does not impose an obligation to open up welfare services to the private sector.

12. Taking into account the facts of the case and LWB's assessment, COMPAG has concluded that SWD's arrangement of inviting only its subvented NGOs to provide OPRS impose barriers to entry for potential private operators. Nevertheless, COMPAG considers that SWD's underlying policy considerations underpinning the arrangement and LWB's assessment provide sufficient justifications for the arrangement. Noting that the arrangement would give rise to significant impact on competition in the OPRS sector in the longer term, COMPAG has advised SWD to monitor the situation of the OPRS sector, and conduct a review at an appropriate time and report to COMPAG on the outcome of the review.

Case 2: Complaint about the exclusive right of a developer to provide transportation services for a residential area (under investigation)

13. 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.

14. The Transport and Housing Bureau ("THB") has provided information about the case, which is being processed by the COMPAG Secretariat.

Cases 3-4: Complaints about the Transport Department's issuance of licences for the provision of residents' services and student services by non-franchised buses (under investigation)

15. There are two complaints concerning respectively the provision of residents' services and student services by non-franchised buses.

16. 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.

17. 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. THB has conducted an investigation into the cases. The outcome of the investigation will be considered by COMPAG.

Cases 5-7: 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.

20. 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.

21. 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.

22. 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.

23. THB has conducted an investigation into the cases. The outcome of the investigation will be considered by COMPAG.

Case 8: 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's tendering of designated driving school sites (under investigation)

24. The complainant alleged that a particular company and its subsidiaries had monopolised the market for providing training for the Mandatory Competence Test ("MCT") of the Motorcycle Driving Test, as a result of TD and the Lands Department'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.

25. THB has conducted an investigation into the case. The outcome of the investigation will be considered by COMPAG.

Case 9: Complaint about the booking of diving pools managed by the Leisure and Cultural Services Department (under investigation)

26. The complainant pointed out that the Leisure and Cultural Services Department ("LCSD") only allowed booking of its diving pools by diving instructors recognised by the Hong Kong Underwater Association ("HKUA"). The complainant alleged that the arrangement gave HKUA an unfair advantage.

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

Case 10: Complaint about the provision of special subsidy to a waste treatment service provider by the Environmental Protection Department (under investigation)

28. The complainant alleged that the Environmental Protection Department ("EPD") granting a special subsidy to a waste treatment company, but not other companies or individuals in the same trade was unfair to other players in the market.

29. The COMPAG Secretariat will seek information from EPD about the case, which will be considered by COMPAG.

Case 11: Complaint about the LCSD's tendering exercise for changing carpets for the Hong Kong Science Museum (under investigation)

30. The complainant alleged that LCSD had adopted the carpet sample provided by an existing contractor as the tender requirement for a carpet-changing contract for the Hong Kong Science Museum, and that the existing contractor enjoyed exclusive discounts from the sole supplier of the carpet brand in question.

31. The COMPAG Secretariat will seek information from LCSD 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 12: Complaint about a contractual requirement of the Hong Kong Housing Society in relation to the Senior Citizen Residences Scheme (case closed)

32. The complainant alleged that the contractual requirement for tenants of the Senior Citizen Residences Scheme (“SEN”) to procure the Basic Care Services provided by the Hong Kong Housing Society (“HKHS”) might constitute anti-competitive tying and bundling. THB has investigated the case.

33. COMPAG has considered the complainant’s competition concerns raised, and also THB’s assessment that –

- (a) SEN is a specific housing initiative which seeks to fill a market niche for the elderly of the middle-income group, by providing them with elderly housing with integrated care and supportive services;
- (b) in view of the limited number of SEN tenants (around 660), HKHS does not possess substantial degree of market power in the elderly housing market or the elderly care services market; and
- (c) SEN, as an innovative housing product, can in fact inspire the provision of other new and innovative types of housing products or services for the elderly.

34. Taking into account the facts of the case and THB’s assessment, as well as the fact that other market players are free to provide similar products for the elderly if they so wish, COMPAG has concluded that HKHS’ SEN does not give rise to impact on competition, let alone significant impact, and the complaint is therefore found unsubstantiated. Nevertheless, COMPAG has advised HKHS to consider ways to better inform potential tenants of the arrangement concerned in its upcoming projects.

Case 13: Complaint about the Airport Authority Hong Kong’s restriction on the provision of catering services for private jets (under investigation)

35. The complainant alleged that the Airport Authority Hong Kong (“AA”) only allowed three approved catering companies to provide in-flight catering services to private jets and access the Hong Kong Business Aviation Centre (“HKBAC”) where private jets are parked and serviced. Other caterers could not access nor make deliveries to HKBAC, whether landside or airside. The complainant further alleged that AA’s restriction had denied smaller caterers from entering the private jet catering market.

36. The COMPAG Secretariat will seek information from THB about the case, which will be considered by COMPAG.

Cases 14-15: Complaints about AA's tendering arrangements (under investigation)

37. There are two complaints concerning HKAA's tendering arrangements.

38. In the first case, the complainant alleged that AA had repeatedly changed the requirements and deadlines of certain tendering exercises for the provision of ferry services, and that AA had not published the winning tender prices.

39. The second case concerned a tendering exercise for the provision of information technology-related maintenance and support service. The complainant, an existing service provider, pointed out that it had been asked by AA to express interest and submit a budgetary quote for renewing the contract, which was awarded to another company in the end. The complainant alleged that AA's request for a budgetary quote before formal invitation to tender could give rise to competition concern.

40. The COMPAG Secretariat will seek information from THB about the two cases, which will be considered by COMPAG.

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