



Enhancing Procedural Fairness and Transparency of Competition Law Enforcement in Hong Kong

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Promoting procedural fairness and transparency

Three key aspects:



Provisions of the Hong Kong Competition Ordinance providing for procedural fairness and transparency



Guidelines and other publications to provide clarity about how we will interpret the law and exercise our powers



The processes and procedures we are adopting in practice



Competition Ordinance

- The Hong Kong Competition Ordinance only came into full effect on **14 December 2015** so many provisions still to be tried and tested
- Key features:

- Competition Commission investigates complaints and brings cases to the Competition Tribunal for decision as to whether there has been a contravention and imposition of penalties and other orders

- Commission does make decisions on applications and can accept commitments, issue infringement notices etc

- Mergers power is currently limited to the telecommunications sector administered by the Communications Authority



Competition Tribunal



- Comprised of judges from Hong Kong's Court of First Instance
- Tribunal has a comprehensive internet site (www.comptribunal.hk):
 - Tribunal Rules and Practice Directions
 - Forthcoming hearings and judgments (to come . . .)
- Commission will have to prove its case – parties can bring evidence in their defence
- Proceedings will be held in public
- Decisions can be appealed to Court of Appeal



Commission decisions and actions

The Ordinance requires transparency and provides procedural safeguards, for example:

- ✓ consultation of interested parties in respect of applications for Block Exemptions and Decisions;
- ✓ a public register of commitments accepted by the Commission must be maintained;
- ✓ the Commission must give notice of a proposal to issue an infringement notice;
- ✓ notices to produce documents must state the subject matter and purpose of the investigation;
- ✓ confidentiality obligations imposed on the Commission.



Rights of review

- The Ordinance provides that an application may be made to the Tribunal for review of certain Commission decisions called “reviewable determinations” including:
 - variation of, or release from, a commitment
 - decision to terminate a leniency agreement
- In addition the Commission is subject to general administrative law which gives parties the right to seek judicial review of its decisions



Guidelines under the Competition Ordinance

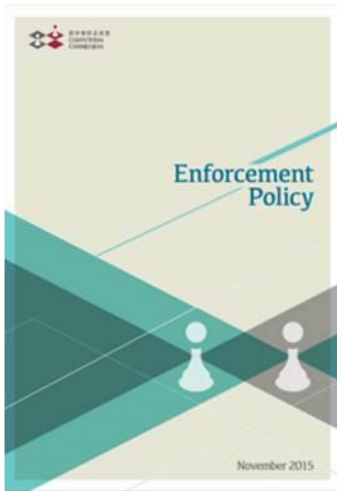


Publishing guidelines enhances transparency:

- Guidelines outline how the Commission proposes to interpret the Competition Ordinance
- Also indicate the procedures the Commission will follow in dealing with complaints, investigations and applications, including the Commission's approach to confidentiality and disclosure
- **Two rounds of engagement / consultation**
 - First draft – October 2014
 - Wide response (over 600 pages), including trade associations representing many thousands of HK businesses
 - Revised draft – March 2015
 - Guide which outlines the main issues raised in previous consultation and Commission's response also issued
 - Further comments received
- **Finalised guidelines released in July 2015**



Other publications

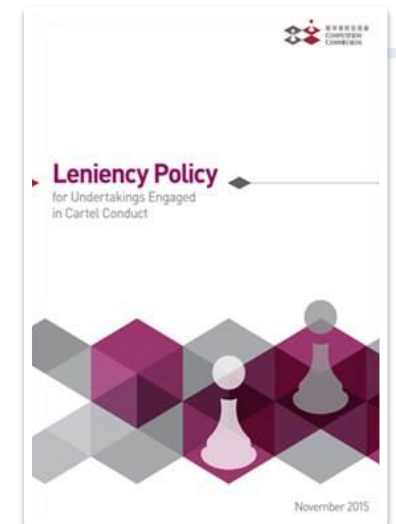


Enforcement Policy

- spells out Commission priorities
- factors to be taken into account when resolving cases and seeking remedies

Leniency Policy

- transparency as to who is eligible and the process the Commission will follow



Commission practice so far

Trade Associations Project

- Clear information about how the law applied to trade associations in our brochure
- Wrote to more than 500 associations many months before law commenced
- Further warning to those we could see were still not complying before law commenced
- Made public the names of those trade associations that changed practices following the Commission's intervention



Commission practice so far

Bid-rigging campaign

- Have made it clear this is a priority for Commission's enforcement activity
- Public report on our study of bid-rigging in the building maintenance
- Explanations for the community and business about what bid-rigging is and how to avoid being involved (theme for campaign centres around 出貓, "Taking out the cat" = cheating)
- Brochures, TV advertisements, roving exhibition, seminars etc



Commission practice so far

- As outlined in our Guidelines on investigations, the Commission has not commented on matters it is considering or investigating (despite lots of people asking)
- However, we have been transparent about the outcomes of our investigations:
 - Newspaper Hawkers Association price fixing

