



競爭快訊

Competition Matters

第 13 期 Issue No.13 11/ 2020



競爭事務委員會
COMPETITION
COMMISSION

行政總裁的話 Message from CEO

縱然新冠病毒疫情帶來了挑戰，總結過去 5 個月，競爭事務委員會（競委會）完成了兩宗執法個案，亦展開了兩項不同的宣傳活動，成果豐碩。本月初，競委會歡迎競爭事務審裁處（審裁處）就一宗資訊科技合謀案件作出裁決。這是競委會首次與答辯人達成協議、並以同意方式處理法律責任及採取補救方法的案件，由於有關協議於早期達成，節省了大量時間及費用。此外，競委會亦完成了對香港海港聯盟的調查，並已接納聯盟各成員作出的承諾，該承諾迅速及有效地釋除了競委會的疑慮。

在倡導工作方面，競委會的嚴打瓜分市場宣傳計劃，於國際競爭規管網絡（ICN）及世界銀行集團合辦的「競爭倡導比賽」中贏得大獎。競委會的宣傳活動在成效及吸引度方面屢獲認同，我們深感高興。新一輪宣傳亦剛於本月初展開，今次是以本港最常見的其中一種合謀行為——「合謀定價」為主題。另一方面，為繼續廣泛接觸青少年，我們即將推出「玩·PO·競」社交媒體宣傳挑戰賽，讓大專院校學生有機會一展創意，透過社交媒體推廣競爭法。最後，在疫情下，競委會仍繼續透過網上講座及會議接觸持份者，包括特別為非專注競爭法的律師所舉辦的培訓。

就我個人而言，這是我任內最後一次為《競爭快訊》執筆。能夠為香港競爭法的發展盡一分力，我實在深感榮幸。競委會的成果，實有賴委員會上下能幹勤奮的團隊、傑出的管理層，以及主席和各委員的帶領。大家的努力，讓我由衷敬佩。我對競委會的同事充滿信心，大家定會繼續緊守崗位，服務廣大市民及香港這個美麗的城市。

Despite challenges presented by the pandemic, it has been a fruitful five months with the conclusion of two enforcement cases and the launch of two different advocacy campaigns. Earlier this month, the Commission welcomed the judgment handed down by the Competition Tribunal (Tribunal) in an IT cartel case. It is the first case in which both the liability and relief portions of the proceedings were settled at an early stage, saving all concerned significant time and costs. The Commission also concluded its investigation into the Hong Kong Seaport Alliance by accepting commitments from the parties to the Alliance, which addressed the Commission's competition concerns in an effective and timely manner.

In terms of advocacy, the Commission's anti-market sharing campaign was named a winner in the Competition Advocacy Contest co-organised by the International Competition Network and World Bank Group. We are pleased by the continuous recognition that our messaging is effective and well-received. In our latest advocacy campaign launched this month, we focus on the theme of price fixing which is one of the most common types of cartel conduct in the city. Continuing our youth outreach, we are launching "Post to Compete" Social Media Challenge where tertiary students have the opportunity to unleash their creativity to promote competition law on social media. Finally, despite the pandemic, the Commission continued to engage its stakeholders through webinars and online conferences including a training series tailored for lawyers with no competition law background.

In closing, this will be my last newsletter as CEO. It has been an honour and privilege to play a small part in the development of competition law in Hong Kong. The real work, however, is done by the Commission's talented and hard working staff, its astute Executive Directors, and its sage Chairman and Members. They have all earned my deep respect and admiration. I leave confident in the future of their work for you and this wonderful city.



冼博崙 Brent Snyder
行政總裁 Chief Executive Officer

資訊科技公司交換未來價格意向被判罰

IT company sanctioned for exchange of future price intention

2020年11月3日，審裁處裁定資訊科技公司 Quantr Ltd (Quantr) 及其董事(答辯人)在海洋公園公司進行的一次招標中，與競爭對手交換未來定價資料，構成合謀定價，違反或牽涉入違反《競爭條例》(《條例》)。按審裁處發出的命令，Quantr 須按競委會建議支付罰款 37,702 港元，而兩名答辯人均須支付競委會的訟費。審裁處亦接納了競委會的建議，暫緩原本提出的其餘幾項申索，條件是答辯人須向其全體職員推行競爭合規計劃。

本案代表著競委會執法工作的幾個重要里程碑。首先，本案是競委會首次於訴訟初期便與答辯人達成協議，並以同意方式處理有關法律責任及採取補救方法，節省了大量時間及費用。此外，這亦是香港競爭法體系下首個源於企業成功申請寬待而入稟的個案。競委會於案中亦首次使用了違章通知書，處理同樣參與了該合謀行為的公司 Nintex Proprietary Limited 的事宜。

[按此](#)瀏覽詳情。

On 3 November 2020, the Tribunal ruled that IT company Quantr Ltd. and its director (Respondents) contravened or were involved in the contravention of the Competition Ordinance by engaging in the exchange of future pricing information in a bidding exercise organised by the Ocean Park Corporation. The conduct amounted to price fixing under the Ordinance. The Tribunal ordered Quantr to pay the pecuniary penalty of HK\$37,702 recommended by the Commission and that both Respondents pay the Commission's costs of proceedings. The Tribunal also accepted the Commission's recommendation to suspend the remaining claims originally sought on condition that the Respondents conduct a competition compliance programme for all of its staff.

This case marks several important enforcement milestones for the Commission. It is the first case in which the Commission and the Respondents reached agreement to resolve both the liability and relief portions of the proceedings by consent at an early stage, saving both sides significant time and costs. It also represents the first proceedings in Hong Kong's competition regime resulting from a successful leniency application. The Commission also made use of an infringement notice as a remedy for the first time to resolve the matter with respect to Nintex Proprietary Limited, which also participated in the cartel conduct.

Click [HERE](#) for details.

競委會接納香港海港聯盟的承諾

Commission accepts commitments by Hong Kong Seaport Alliance



競委會較早前完成了對香港海港聯盟的調查，有關調查著眼於聯盟會否損害在香港的競爭，違反《條例》下的第一行為守則。就競委會的調查結果，聯盟早前建議作出承諾，以釋除競委會的疑慮。競委會遂於 8 月就聯盟的建議承諾諮詢公眾，其後於 10 月 30 日宣布接納經修訂後的承諾。

聯盟是以合約形式進行的聯營安排，由香港國際貨櫃碼頭有限公司、現代貨箱碼頭有限公司、中遠一國際貨櫃碼頭(香港)有限公司及亞洲貨櫃碼頭有限公司組成。根據聯盟的協議，各成員會透過在運作、商業及財務上的

協調，共同經營及管理他們在香港葵青港(葵青)的 8 個貨櫃碼頭共 23 個泊位。葵青的第五個貨櫃碼頭營運商 Goodman DP World Hong Kong Limited (DP World)，並不是聯盟的成員。

專題 Feature

有關承諾包括：為門戶港貨物處理費設定上限，並維持特定服務水平；為「其他使用者費用」設定上限；維持與 DP World 的互惠服務安排；及避免於赤灣港及蛇口港任命與聯盟相同的董事。各成員亦在承諾中加入了一項說明，陳述了他們所採取的計劃及機制，以確保顧客能分享到聯盟預期可帶來的經濟效益。

獨立的監察受託人將代表競委會監察各成員遵守承諾的情況。

[按此](#)瀏覽聯盟的承諾及競委會的接受通知書。

On 30 October 2020, the Commission announced acceptance of commitments offered by the parties to the Hong Kong Seaport Alliance. The acceptance follows a public consultation in August on an earlier set of commitments proposed by the Alliance, which aimed to address the Commission's concerns arising from its investigation of whether the Alliance may constitute a contravention of the First Conduct Rule of the Ordinance by harming competition in Hong Kong.

The Alliance is a contractual joint venture between Hongkong International Terminals Limited, Modern Terminals Limited, COSCO-HIT Terminals (Hong Kong) Limited, and Asia Container Terminals Limited. Pursuant to the Alliance, the parties jointly operate and manage their 23 berths across eight terminals at Kwai Tsing port in Hong Kong, through operational, commercial and financial coordination. The fifth operator at Kwai Tsing, Goodman DP World Hong Kong Limited ("DP World"), is not a party to the Alliance.

The commitments include capping handling charges and maintaining service levels for Gateway cargo, capping "Other Counterparty Charges", maintaining overflow arrangements with DP World and avoiding cross-directorships with Chiwan and Shekou ports. The Alliance parties have also added in the commitments an explicit reference to the plans and mechanisms they adopted to ensure customers receive a fair share of the efficiencies anticipated by the Alliance.

Compliance with the commitments will be monitored by an independent monitoring trustee on behalf of the Commission.

Click [HERE](#) for the commitments and the Commission's notice of acceptance.

為非專注競爭法的律師提供培訓

Training for lawyers who are not competition law specialists

競委會於 2020 年 10 月舉辦了一系列共四場網上培訓講座，以協助未有競爭法經驗或相關經驗較淺的律師，就競爭法事宜向客戶提供意見。課程講者包括競委會人員、以及競爭法私人執業律師，內容除了涵蓋《條例》的主要條文，亦介紹了法例的實務應用，包括如何協助客戶確保企業合規及適當地應對調查。超過 170 名法律界從業員參與了是次培訓，期間亦就不同議題作出討論。



The Commission conducted a webinar series over four afternoons in October 2020 to help lawyers with limited or no competition law experience to advise their clients on matters related to competition law. Delivered by staff and executives from the Commission, as well as competition lawyers in private practice, the training not only covered key provisions of the Competition Ordinance, but also practical application of the law including how to help clients ensure compliance and respond appropriately to an investigation. Over 170 legal practitioners joined the training with many thoughtful questions posed and discussed throughout the sessions.

向參與抗疫資助計劃的機構發出合規指引

Compliance guidance to participants of anti-epidemic subsidy programmes

競委會早前收到情報（包括媒體報道），指有參與特區政府防疫抗疫基金資助計劃的企業，在採購或供應有關貨品或服務時，懷疑從事合謀行為。就此，競委會於 8 月份發布了[新聞稿](#)，忠告相關企業必須遵守《條例》。

競委會重申，將運用法例所賦予的權力，徹底追究懷疑違法的行為。各行各業的供應商絕不可與競爭對手協議圍標、合謀定價、瓜分市場或交換影響競爭的敏感資料。

競委會亦提醒申領資助的企業，在採購過程中應保持警覺，加強防範反競爭行為。與此同時，申領資助的企業本身，亦不可牽涉入任何反競爭行為，例如參與訂立或執行反競爭協議，或是在知悉申請所包含的報價乃涉及供應商合謀的情況下，仍然容許以其名義申請政府資助。

受委託管理各項資助計劃的公營機構，亦需顧及競爭方面的考慮，對合謀行為保持警覺。

In response to intelligence received (including from media reports) on businesses suspected of engaging in collusive practices when procuring and supplying goods and services while availing themselves of subsidy programmes under the Government's Anti-Epidemic Fund, the Commission issued a [press statement](#) in August cautioning participants in these programmes to comply with the Ordinance.

The Commission reiterated that it will spare no effort in pursuing suspected contraventions with the full force of the law. Suppliers in all business sectors should never agree with their competitors to rig bids, fix prices, share markets or exchange competitively sensitive information.

Businesses applying for and receiving subsidies are reminded to be vigilant during the procurement process and guard against potential anti-competitive practices. They must also refrain from being complicit in any anti-competitive conduct such as, by being a party to an anti-competitive agreement themselves; or by allowing an application for Government subsidies to be submitted in their names when they know that the application contains quotations that were obtained as a result of supplier collusion.

Public bodies which are tasked to administer these subsidy programmes are also encouraged to take competition concerns into consideration and be vigilant against collusive conduct.

宣傳及倡導 Advocacy & Outreach

競委會展開打擊合謀定價宣傳活動

Commission launches advocacy campaign to combat price fixing



競委會於 11 月初展開了「打擊合謀定價」宣傳活動，讓社會大眾認識和了解合謀定價及其禍害，鼓勵各界守法，以及加強偵測有關行為。

合謀定價是本港最常見的合謀行為之一，任何界別均有可能發生，有關行為令消費者及企業無法受惠於有效的市場競爭。而至目前為止競委會已入稟審裁處的六宗個案中，五宗

均涉及不同形式的合謀定價，而審裁處至今已就其中四宗案件裁定競委會勝訴。這帶出了一個強烈的訊息：合謀定價是法律所不容許的行為。

宣傳及倡導 Advocacy & Outreach

是次宣傳活動包括新一輯由著名藝人鄭子誠主演的電視宣傳片及五條教育短片，介紹與合謀定價有關的重要概念，以喚起公眾的關注。為加深大眾對這種行為的認識，競委會同時發布了小冊子，簡介不同形式的合謀定價行為、如何辨識該等行為，以及當有可疑情況發生時應如何處理等等。此外，競委會亦將會為企業舉辦一系列主題講座，詳情可瀏覽「[打擊合謀定價](#)」資訊中心。



The Commission launched a “Combat Price Fixing Cartels” Campaign (Campaign) in early November to enhance public awareness and understanding of price fixing and its harm as well as to encourage compliance and strengthen detection of such conduct.



Price fixing is one of the most common types of cartel conduct in Hong Kong that can occur in any sector, depriving consumers and businesses of the benefits of effective market competition. Of the six cases brought before the Tribunal so far, five were related to price fixing in different forms. The Tribunal had to date ruled in the Commission’s favour four of these cases, sending a strong warning that such practices are clearly not acceptable under the law.

The Campaign includes a new TV announcement and five infotainment ads featuring actor Timothy Cheng Tse-sing to arouse public attention and explain the key concepts of price fixing. To deepen public understanding,

the Commission has published a brochure outlining different types of price fixing with useful tips on how to identify it and what to do should it be suspected. A series of thematic seminars will also be conducted for businesses from different sectors in the coming months. Visit the “[Combat Price Fixing](#)” Information Centre for more details.



接觸地區人士 打擊合謀行為 District outreach on fighting cartel conduct

在疫情下，競委會繼續致力提升社會對合謀行為的認識，以及提醒公眾（特別是業主）如何偵測及防範有關行為。2020年8月至11月期間，競委會參加了民政事務總署在九龍灣、荃灣及北角主辦的三場大廈管理簡介會。我們亦在新入伙的公營房屋駿洋邨、漁灣邨及雍明苑，透過預錄檔案向裝修承辦商講解《條例》內容。

持續與持份者接觸

這段期間，競委會為企業及公眾舉辦了三場《競爭條例》網上講座，其中一場的對象是資訊科技界人士。競委會亦派代表參加了14場網上活動，接觸不同的持份者，包括公營機構、法律及金融界別。



宣傳及倡導 Advocacy & Outreach

Despite the pandemic, the Commission continues its efforts to raise community awareness of cartel conduct and educating the public, especially property owners, on how to detect and prevent such practices. Between August and November 2020, the Commission participated in three briefings on building management organised by the Home Affairs Department in Kowloon Bay, Tsuen Wan and North Point. Pre-recorded presentations were delivered at pre-intake briefings for decoration contractors at new public housing Chun Yeung Estate, Yue Wan Estate and Yung Ming Court.

Ongoing stakeholder engagement

During the period, the Commission organised three webinars on the Competition Ordinance for businesses and the public, with one of them targeting the IT sector. Representatives of the Commission also participated in 14 online events with various stakeholders including public bodies as well as the legal and financial communities.



競委會榮獲兩項大獎

Commission scooped two major awards

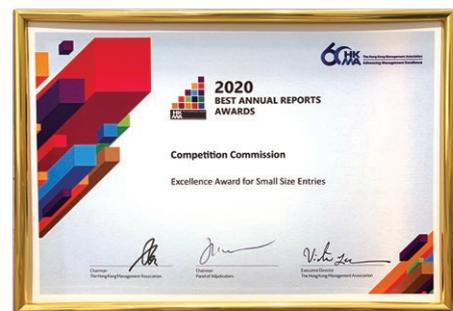
競委會的「嚴打瓜分市場」宣傳活動，於國際競爭規管網絡及世界銀行集團合辦的「2019-2020 競爭倡導比賽」中，在主題為「促進執法與倡導相互配合以提升政策成效」的組別，成為大獎得主。該項宣傳活動首次透過社交媒體及網絡紅人（KOL）接觸廣大市民，不但讓公眾進一步認識瓜分市場，亦有助競委會收集情報。競委會的宣傳倡導工作已第四度於這個大型國際倡導比賽中獲獎，能夠再次在國際間獲得認同，我們感到非常榮幸。



另外，競委會的 2018/19 年報亦在香港管理專業協會舉辦的「2020 最佳年報獎」比賽中，從 78 份參賽作品中脫穎而出，獲得優秀小型機構年報獎。該年報憑着獨特的封面設計及年度重點，獲得評審嘉許。

此外，競委會的 2019/20 年報經已出版，可[按此](#)瀏覽。

The Commission's "Combat Market Sharing Cartels" Campaign was named a winner in the 2019-2020 Competition Advocacy Contest organised by the International Competition Network and the World Bank Group, on the theme "Boosting policy effectiveness through better coordination between enforcement and advocacy". Leveraging social media and Key Opinion Leaders (KOLs) for the first time and reaching out to a wide range of audience, the campaign has not only raised public awareness on market sharing, but also aided in the intelligence-gathering efforts of the Commission. This is the fourth year the Commission's advocacy initiative received an award in this major international advocacy contest and it is a true honour to be once again recognised by the global competition law community.



Competing against 78 entries, the Commission's Annual Report 2018/19 won the "Excellence Award for Small Size Entries" in the 2020 Best Annual Report Awards organised by the Hong Kong Management Association. The Report was commended for its striking front cover and highlights pages.

Meanwhile, the Annual Report for the financial year 2019/20 has been published. Click [HERE](#) to view.

最新動向 Upcoming Activity

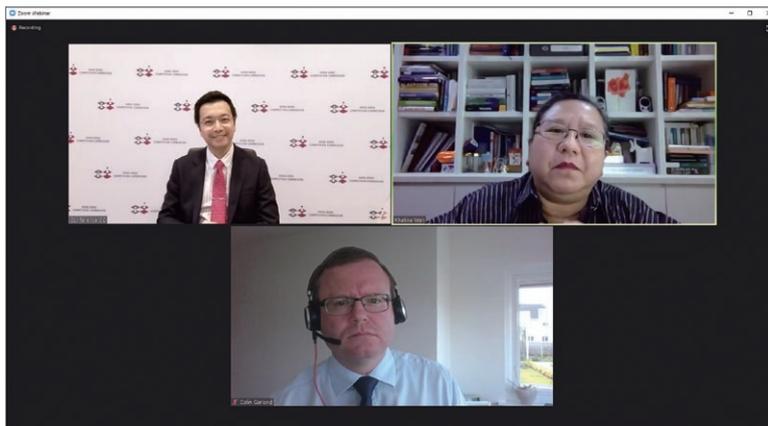
競委會即將推出第二屆「玩·PO·競」社交媒體宣傳挑戰賽，誠邀本港各大專院校學生策劃創意宣傳計劃，在社交媒體平台推廣競爭法，冠軍隊伍可獲得 30,000 港元現金獎及寶貴的暑期實習機會。請密切留意 posttocompete.hk ！

The Commission is launching the 2nd edition of the “Post to Compete” Social Media Advocacy Challenge. All tertiary students in Hong Kong are invited to formulate creative social media advocacy strategies to promote competition law. The champion team will receive a \$30,000 cash prize and valuable summer internship opportunities. Stay tuned at posttocompete.hk ！



國際交流活動 International Activities

2020年9月25日，競委會與香港中文大學合辦了一場網上研討會，討論新冠病毒疫情期間航空業的競爭情況。這是競委會第二次就應對疫情而舉辦網上研討會，講者包括來自馬來西亞、新加坡、中國內地及英國的專家及當地競爭執法機構及民航事務當局的代表，吸引了超過 35 個司法管轄區的業內人士踴躍參與。



競委會以國際競爭規管網絡（ICN）競爭倡議工作小組聯席主席的身份，在9月中舉行的ICN 2020 虛擬年度大會，以「數碼年代的競爭倡導」為題，協辦了一場大型會議。競委會亦協助製作了一部短片，宣揚小組的工作成果及即將展開的項目。

The Commission co-hosted a webinar with the Chinese University of Hong Kong on 25 September 2020 on competition in aviation after COVID-19. Presented by leading experts and officials from competition and aviation authorities in Malaysia, Singapore, Mainland China and the UK, this second webinar hosted by the Commission in response to COVID-19 received strong support from industry practitioners from over 35 jurisdictions.

As a co-chair of the International Competition Network's (ICN) Advocacy Working Group (AWG), the Commission co-organised a plenary discussion on “Competition Advocacy in the Digital Age” for the ICN 2020 Virtual Annual Conference in mid-September. The Commission also co-produced a short video to promote the AWG's work products and forthcoming projects.

競爭法學堂 *Competition Law Classroom*

《競爭條例》下的「交換資料」(下)

根據《條例》，互為競爭對手的企業交換影響競爭的敏感資料，可能會引起競爭問題。交換的資料所涉及的類型和相關市場的結構，是分析有否違反《條例》的重要考慮因素。競委會承接上一期，繼續解答企業對於交換資料的其他常見疑問。

企業可否透過第三方交換影響競爭的敏感資料？

交換影響競爭的敏感資料，不論是與競爭對手直接交換，或透過第三方間接地進行，均可能會引起競爭問題。企業之間若透過第三方，例如共同的供應商、分銷商或行業協會等「渠道」，間接交換未來的定價意向，這相當可能會被視為合謀定價，是《條例》下的嚴重反競爭行為。

遇到非法交換資料的情況可怎樣做？

如你懷疑有非法交換資料的行為，請保留所有證據，並向競委會舉報。

如你發覺自己正參與分享敏感資料的討論，你應立即退出會議，公開地與所討論的事宜劃清界線，及表明你不會使用所交換的資料或根據該資料行事。

已參與非法行為的人士應盡快聯絡競委會申請寬待或提供合作。

'Exchange of information' under the Competition Ordinance (II)

Under the Ordinance, competition concerns may arise where businesses which are **competitors** exchange **competitively sensitive information**. The type of information exchanged and the structure of the market in which the information exchange occurs are important factors in the analysis of whether there is a contravention of the Ordinance. Following the previous issue, here are more common queries that businesses may have on the topic.

Can businesses exchange competitively sensitive information through a third party?

The exchange of competitively sensitive information, be it directly between competitors or through a third party, may give rise to competition concerns under the Ordinance. If businesses exchange information on their future price intentions indirectly through third parties such as common suppliers, distributors or trade association as a "conduit", this will likely be considered as price fixing, which is a serious anticompetitive conduct under the Ordinance.

What can you do when you encounter unlawful information exchanges?

If you **suspect** an unlawful exchange of information, preserve all available evidence and report it to the Commission.

If you find yourself participating in a discussion that involves the sharing of competitively sensitive information, you should leave the meeting, publicly distance yourself from the matters discussed and make it clear that you do not intend to use or act on the information that was exchanged.

Those **already involved** in unlawful conduct should approach the Commission for leniency or cooperation.

