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For Immediate Release

Competition Commission Publishes Enforcement Policy and Cartel Leniency Policy

The Competition Commission (Commission) today (19 November) published two important documents: its *Enforcement Policy* and its *Leniency Policy for Undertakings Engaging in Cartel Conduct (Cartel Leniency Policy)* to provide further details of how the Commission intends to carry out its enforcement function under the Competition Ordinance (Ordinance), scheduled to be in full effect from 14 December 2015.

Enforcement Policy

While the Commission will carefully consider all complaints, it cannot conduct a detailed investigation of every complaint it receives or competition issue it becomes aware of. The Commission intends to exercise the discretion it has under the Ordinance to direct its resources to investigations and enforcement actions that result in the greatest overall benefit to competition and consumers in Hong Kong.

Supplementing the Ordinance and the Commission's six Guidelines, the *Enforcement Policy* outlines how the Commission will prioritise the use of its operational resources to investigate possible contraventions of the First Conduct Rule and the Second Conduct Rule in an efficient and timely manner. It also describes how the Commission's enforcement response will be suitable and proportionate to the conduct and the resulting harm where the Commission identifies a possible contravention.

When considering whether to investigate and how to resolve individual cases, the Commission will consider the following three key issues in addition to the specific facts of the case:

1. Compliance Focus

During the initial years of the operation of the Ordinance, the Commission's resources will be focused on encouraging compliance in the Hong Kong economy as a whole, rather than focusing on specific sectors.

The Commission will accord priority to three forms of conduct: 1) cartel conduct which includes price-fixing, market sharing, output restriction and bid-rigging 2) other agreements contravening the First Conduct Rule causing significant harm to competition in Hong Kong; and 3) abuses of substantial market power involving exclusionary behaviour by incumbents operating on markets in Hong Kong.

In addition to taking actions against undertakings, the Commission may also prioritise taking action against associations of undertakings and officers, including directors of undertakings who were involved in the cartel conduct.

2. Severity Factors

In determining how to resolve contravention cases, the Commission will take into account whether there is blatant disregard for the law, deliberateness of the conduct, involvement of the senior management, their history of contravention and whether they have previously been advised by the Commission of its concern but failed to make any alteration of the conduct in question.

3. Effective and Appropriate Remedies

The Commission will generally favour remedies which would stop the unlawful conduct speedily, undo the harm caused by the conduct, impose sufficient economic sanction to encourage compliance and set an appropriate standard for future similar cases.

The Enforcement Policy also provides more detail on how the Commission may take into account cooperation or settle matters with undertakings and individuals.

Cartel Leniency Policy

Leniency is a key investigative tool used by competition authorities around the world to combat cartels, which are a contravention of the First Conduct Rule under the Ordinance. The *Cartel Leniency Policy* outlines the Commission's approach to leniency for undertakings engaged in cartel conduct. It is designed to provide a strong and clear incentive for a cartel member to stop the cartel conduct and to report it to the Commission.

In exchange for a cartel member's cooperation, the Commission will agree not to commence proceedings for a pecuniary penalty against the first cartel member who reports the cartel conduct to the Commission and meets all the requirements for receiving leniency under the policy. The Commission will extend that leniency to current officers and employees of the cartel member and specifically named former officers or employees and current and former agents of the cartel member who cooperate with the Commission.

The *Cartel Leniency Policy* is intended to increase the risk of detection and discourage the continuation of cartel conduct and the formation of cartels. It enables the Commission to obtain evidence more efficiently and effectively leading to quicker resolution of the Commission's investigations of cartels.

The publication of the *Cartel Leniency Policy* follows careful consideration by the Commission of 20 submissions received from a wide spectrum of stakeholders in Hong Kong and overseas including law firms, professional advisory bodies, businesses, and academics during a public consultation conducted in September 2015.

Dr. Stanley Wong, Chief Executive Officer of the Commission, said, "With the Ordinance soon to be fully implemented, apart from assisting businesses in understanding and complying with the Ordinance, we also encourage cartel members, in particular, to stop their cartel conduct or, under appropriate circumstances, report the cartel to the Commission when the new law comes into full effect next month."

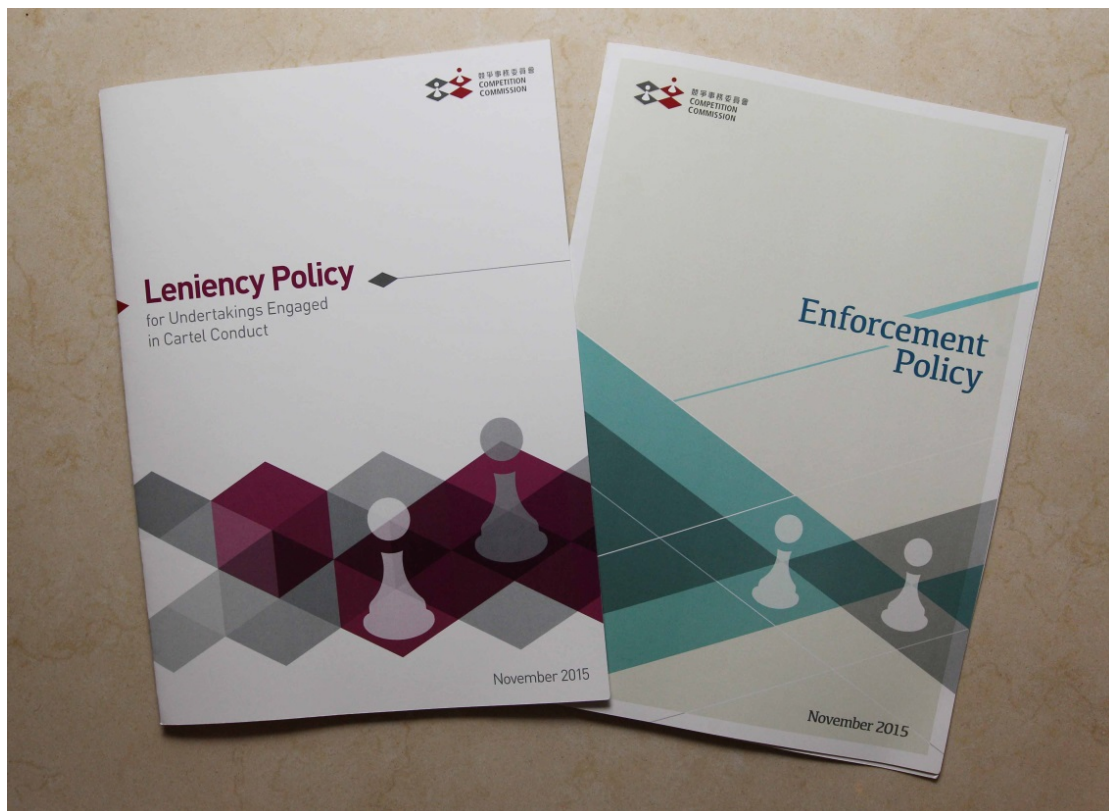
The *Enforcement Policy* and *Cartel Leniency Policy* in both Chinese and English are available on the Commission's website (www.compcomm.hk).

NOTES FOR THE EDITOR

The Commission is an independent statutory body established to enforce the Competition Ordinance (Cap. 619), which was enacted in June 2012. The objective of the Ordinance is to prohibit conduct that prevents, restricts or distorts competition and mergers that substantially lessen competition in Hong Kong. At the present time, the Merger Rule applies only to a merger involving an undertaking that directly or indirectly holds a carrier licence issued under the Telecommunications Ordinance (Cap. 106).

The Ordinance will come into full effect on 14 December 2015.

Photo caption:



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