

28 November 2016

For Immediate Release

**Competition Commission calls upon two professional associations
to rectify practices which raise competition concerns**

The Competition Commission (Commission) today (28 November 2016) published an advisory bulletin calling upon two professional associations, namely, the Hong Kong Institute of Architects (HKIA) and the Hong Kong Institute of Planners (HKIP), to take appropriate action to remove or amend without further delay certain provisions in their respective codes of conduct which raise competition concerns.

The HKIA and the HKIP publish on their websites codes of conduct which govern the conduct of their members. Although these associations are themselves exempt statutory bodies under the Competition Ordinance (Ordinance), the conduct of undertakings who are members of these associations is not exempt.

Certain provisions prescribed in their respective codes of conduct as of today restrict their members' freedom to set their own fees and take on clients. The Commission considers these restrictions to be highly problematic. To the extent that these restrictions would prevent any price competition among architects (or their respective companies) or among planners (or their respective companies), their effects could be akin to those of price fixing implemented by cartels. Observance of such restrictions could therefore result in significant harm to competition in the relevant markets.

Prior to full commencement of the Ordinance, the Commission conducted a comprehensive review of the published practices of more than 350 associations and identified over 20 whose published practices on their websites were considered to be at high risk of contravening the Ordinance. The Commission has engaged with these associations and advised them to take appropriate action to comply with the Ordinance.

As a result of the Commission's engagement efforts, most of these associations have undertaken prompt and decisive steps including the removal of price restrictions or fee scales. However, despite continuing contacts by the Commission, to date, the HKIA and the HKIP have yet to remove or amend the problematic provisions in their codes of conduct.

Given the fact that the Commission has been engaging with the HKIA and HKIP for over a year about its concerns, the Commission will refer the conduct of these two exempt statutory bodies to the Competition Policy Advisory Group (COMPAG) if there is still no clear indication that genuine action to rectify the situation is underway by end of January 2017.

The Commission has published an advisory bulletin on its website to further elaborate on the subject and it can be summarised as follows:

Regarding members of HKIA and HKIP

Although the two institutes are currently exempt under the Ordinance, their members do not enjoy such exemption to the extent that they are considered to be undertakings under the Ordinance. Where the Commission has reasonable cause to suspect that any undertakings have given effect to provisions in the Codes of Conduct that are anti-competitive, for example, by following the price restrictions set out in the Codes of Conduct, the Commission will consider appropriate enforcement action in accordance with the Ordinance.

Regarding exempt bodies in general

Exempt bodies should take note that while they may be exempt from the Conduct Rules, they are still subject to the investigation powers of the Commission. Exempt bodies may therefore be required to assist the Commission in investigations into the practices of their members or companies in which its members are employed.

Exempt bodies should further note that it is always open for the Chief Executive in Council, where the conditions in section 5 of the Ordinance are met, to apply the Conduct Rules and other relevant provisions of the Ordinance to any statutory body by regulation.

The Commission calls upon all exempt bodies to adhere to the spirit of the Ordinance by taking steps to cease and desist from any practice or conduct which may harm competition. They are welcome to approach the Commission if in doubt and the Commission will provide advice where appropriate.

Mr. Rasul Butt, Senior Executive Director of the Commission said, “The restrictions imposed by professional associations on their members’ freedom to set prices not only harm competition in the relevant markets, but the impact would also be widespread given the indispensable professional roles of their members in various economic activities. We call upon all trade and professional associations, whether they are exempt public bodies or not, to avoid anti-competitive practices and set a good example in safeguarding free and fair competition in Hong Kong.”

NOTES FOR THE EDITOR

The Commission is an independent statutory body established under the Competition Ordinance (Cap. 619). 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 was fully implemented on 14 December 2015.