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For Immediate Release

Competition Commission advises on practices in employment marketplace

The Competition Commission (Commission) today (9 April) published an advisory bulletin for human resources (HR) professionals, employers and employees at large to raise their awareness of and advising them on the potential risks under the Competition Ordinance related to the determination of employment terms and conditions as well as the hiring of employees. HR professionals and employers should be aware that while the Employment Ordinance is the main piece of legislation governing the conditions of employment in Hong Kong, the Competition Ordinance is also relevant, in particular when it comes to the coordination of employment related practices between businesses.

In a free market economy, businesses compete with each other to offer the best range of products at the best price, leading to better prices, products and more choices for everyone. In the employment context, competition among employers to hire employees leads to better employment terms such as higher salaries or better benefits, and increased opportunities for employees. This concept applies regardless of whether the businesses are engaged in the provision of the same products or services.

Employers that compete to hire employees should refrain from entering into agreements or engaging in concerted practices regarding terms of employment or the hiring of employees. The Commission considers that the following practices between employers are at risk of contravening the First Conduct Rule of the Competition Ordinance:

Wage-fixing agreements

Businesses that reach an agreement on any element of compensation for employees are fixing the price of labour. Compensation in this context is not limited to salaries but also include benefits and allowances such as insurance benefits, housing allowances or severance payments.

Non-poaching agreements

Businesses that reach an agreement in relation to the solicitation or hiring of each other's employees, for example, an agreement to refuse to hire each other's employees, are engaging in market sharing by allocating sources of supply.

Exchange of sensitive information

Sharing of competitively sensitive information between employers about their intentions in employees' compensations or hiring, be it reciprocal or unilateral, and whether done directly or through a third party, may also give rise to competition concerns.

The advisory bulletin that has been published today on the Commission's website (www.compcomm.hk) further elaborates on the topic and a number of hypothetical scenarios are included as guidance for employers, employees and businesses.

Mr. Jindrich Kloub, Executive Director (Operations) of the Commission, said, “Since the commencement of the Competition Ordinance, the Commission has encountered situations where businesses have engaged in coordinated practices related to employment terms and conditions or hiring in general that may give rise to concerns under the First Conduct Rule. The Commission is publishing a bulletin today to raise public awareness of the issue and to alert employers and HR professionals of the potential competition risks with regard to employment related practices.”

“It is important for competition to be working effectively in the labour market which affects the Hong Kong workforce and the economy in general. Employers must make their decisions about hiring and the terms and conditions of employment offered to workers independently. Where the Commission has reasonable cause to suspect that conduct contravening the Competition Ordinance has taken place, it will take the appropriate enforcement action.

We encourage all parties to report suspected anti-competitive arrangements related to employment to the Commission. Those who might have already engaged in such practices can approach the Commission for leniency.”
