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For Immediate Release

Competition Commission takes renovation cartel case to Competition Tribunal

The Competition Commission (Commission) has today commenced proceedings in the Competition Tribunal (Tribunal) against **six decoration contractors**: Fungs E & M Engineering Company Limited, Yee Hing Metal Shop, Accord Construction & Decoration Co., Hing Shing Construction Company, Luen Hop Decoration Engineering Co Ltd, Dao Kee Construction Company Limited and **three individuals**: Mr. WONG Wai Chuen (黃偉銓) and Mr. WONG Fu San (黃富新) for a pecuniary penalty, and CHEUNG Yun Kam (張潤錦) for a director disqualification order.

The Commission alleges that around June to November 2017, the decoration contractors engaged in cartel conduct, in contravention of the First Conduct Rule of the Competition Ordinance (Ordinance), whereby they allocated customers and coordinated pricing in relation to the provision of renovation services at Phase 1 of On Tai Estate in Kwun Tong, Kowloon, a public housing estate developed by the Hong Kong Housing Authority (HKHA). The Commission also alleges that Mr WONG Wai Chuen and Mr WONG Fu San were involved in the contravention as a result of their participation in the alleged conduct.

The Commission is seeking remedies including:

- 1) a declaration that all six decoration contractors have contravened the First Conduct Rule of the Ordinance;
- 2) a declaration that Mr. WONG Wai Chuen and Mr. WONG Fu San were involved in the contravention;
- 3) an order that all six decoration contractors as well as Mr. WONG Wai Chuen and Mr. WONG Fu San pay pecuniary penalties;
- 4) a director disqualification order against Mr. CHEUNG Yun Kam of Luen Hop Decoration Engineering Co Ltd; and
- 5) an order that these decoration contractors and individuals be restrained or prohibited from entering into or participating in any anti-competitive agreements in respect of any renovation projects under the HKHA's Decoration Contractor System.

Mr. Brent Snyder, CEO of the Commission, said, “This is the third market sharing and price fixing case that the Commission has filed over the past two years in relation to the provision of renovation services at public housing, an indication that such practices have been prevalent in the sector. The recent Tribunal judgment in a similar case (CTEA2/2017) in which all ten respondent construction companies were found liable for contravening the Ordinance has sent a clear message that such conduct is a blatant violation of the Ordinance and it is particularly egregious when the people directly targeted are some of Hong Kong’s most vulnerable consumers.”

“While enforcement of the Ordinance is important in deterring anti-competitive behaviours, education of stakeholders also plays an integral role in fostering a compliance culture. To this end, the Commission has been actively engaging with businesses in all sectors, including the building renovation and maintenance sector, and leveraging the recent Tribunal judgments, we will further step up our advocacy initiatives in this regard.”

The Commission calls for market participants in all sectors to stay away from cartel conduct, while those already involved should approach the Commission for leniency or cooperation. All parties are encouraged to report suspected anti-competitive practices to the Commission at 3462 2118.

The Commission is thankful to the HKHA which has rendered full assistance in the investigation of the case.

Notes to the Editor

The Commission

The Commission is an independent statutory body established under the Competition Ordinance (Cap. 619).

The Competition Ordinance

The objective of the Competition Ordinance (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 competition rules in the Ordinance came into force on 14 December 2015.

The First Conduct Rule

Under the First Conduct Rule in section 6(1) of the Ordinance, undertakings are prohibited from making or giving effect to an agreement, or engaging in a concerted practice, if the object or effect of the agreement or concerted practice is to prevent, restrict or distort competition in Hong Kong. Cartel conduct, which includes price fixing, market sharing and bid-rigging, is generally regarded as a particularly harmful form of anti-competitive agreement or concerted practice.

Persons Involved in Contravention

Under section 91 of the Ordinance, a person involved in contravention of a competition rule is a person that: attempts to contravene the rule; aids, abets, counsels or procures any other person to contravene the rule; induces or attempts to induce any other person, whether by threats or promises or otherwise, to contravene the rule; is in any way, directly or indirectly, knowingly concerned in or a party to the contravention of the rule; or conspires with any other person to contravene the rule.

Disqualification under the Ordinance

Section 101 of the Ordinance provides that the Tribunal may order that a person may not, without the leave of the Tribunal: (a) be, or continue to be, a director of a company; (b) be a liquidator or provisional liquidator of a company; (c) be a receiver or manager of a company's property; or (d) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company; for a specified period of time. Under

section 102 of the Ordinance, the Tribunal may only make the above order if the Tribunal has determined that a company of which the person is a director has contravened a competition rule and that the Tribunal considers that the person's conduct as a director makes the person unfit to be concerned in the management of a company.