

Questions and Answers

1. How was the case discovered?

The case was discovered as a result of a leniency application. The application was submitted by one of the bidders in the request for quotations organised by Ocean Park in 2017 for the procurement of certain IT services (Bidding Exercise).

2. How many bidders were involved in the bidding exercise?

A total of four IT companies including Quantr and its co-bidder (leniency applicant) submitted bids during the Bidding Exercise.

3. Why is the identity of the leniency applicant not disclosed?

Pursuant to its *Leniency Policy for Undertakings Engaged in Cartel Conduct* (Leniency Policy), the Competition Commission (Commission) will use its best endeavours to protect any confidential information provided by a leniency applicant, including his/her identity.

4. Other than instituting proceedings before the Competition Tribunal (Tribunal), what remedies does the Commission have to resolve its competition concerns?

Besides bringing cases to court, the Competition Ordinance (Ordinance) provides the Commission with a range of remedies, such as issuing Warning Notices, Infringement Notices or accepting commitments in response to conduct the Commission considers may contravene the Ordinance.

In accordance with its Enforcement Policy, the Commission will seek effective and appropriate remedies that are proportionate to the context and nature of the conduct and the harm caused or likely to occur, with a focus on encouraging compliance.

5. What are the penalties for undertakings and individuals if they are found to have contravened the Ordinance?

The Tribunal may impose a pecuniary penalty of up to 10% of an undertaking's annual Hong Kong turnover per contravention for a maximum period of three years.

The Tribunal may also issue orders requiring individuals to pay a pecuniary penalty or disqualifying them from serving as director of a company for a period of up to 5 years.

Additionally, the Tribunal may issue orders to undertakings and individuals requiring payment of damages to any person who has suffered loss or damage as a result of the contravention, or other orders to cease and remedy the contravention at issue.

6. Who can benefit from the Commission's leniency policy?

Under the Commission's Leniency Policy, the Commission will offer not to apply to the Tribunal for a pecuniary penalty to the *first* undertaking which is a member of a cartel who reports the cartel conduct to the Commission and meets all other requirements of the Leniency Policy.

Cartel members which do not benefit from the Leniency Policy may also cooperate with the Commission under the Commission's *Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct*, in exchange for a discount of up to 50% off the pecuniary penalty the Commission would otherwise recommend to the Tribunal.

7. What is an Infringement Notice?

Section 67 of the Ordinance provides that the Commission may issue an Infringement Notice where it has reasonable cause to believe that there has been a contravention of the First Conduct Rule involving Serious Anti-competitive Conduct and/or the Second Conduct Rule.

In the Infringement Notice, the Commission will offer not to bring proceedings in the Tribunal on condition that the person under investigation makes a commitment to comply with the requirements of the notice within a specified compliance period. The requirements an infringement notice may include, but are not limited to, the following requirements:

- a) to refrain from any specified conduct, or to take any specified action, that the Commission considers appropriate; and
- b) to admit to a contravention of the relevant conduct rule.

8. What if the person who made a commitment does not comply with the requirements of the Infringement Notice?

The Commission may begin proceedings in the Tribunal where it has reasonable grounds for suspecting that a person who made a commitment has failed to comply with the requirements of the Infringement Notice.

9. Why is the exchange of information a potential risk under the Ordinance?

In the normal course of business, undertakings exchange information on a variety of matters with no risk to the competitive process. However, competition concerns may arise under the First Conduct Rule where competitors exchange competitively sensitive information. This will particularly be the case where the exchange of information removes the strategic uncertainty between undertakings which is an inherent part of the competitive process.

Generally, information relating to price or price strategies and quantities concerning sales, market shares, sales to particular customer groups or territories, is the most competitively sensitive. If competitors share information in private on future pricing intentions, the information exchange will likely be considered as having the object of harming competition and may amount to price fixing.

On the other hand, the exchange of data which is historical, aggregated and anonymised or publicly available data is less likely to harm competition.

10. How many complaints / enquiries has the Commission received so far? How many are IT related? How many are on price fixing and the exchange of competitively sensitive information?

As at end of December 2019, the Commission had received around 4,000 complaints and enquiries and they are related to a wide variety of sectors, including the information technology sector. Nearly 30% of the complaints and enquires received were on alleged cartel conduct including price fixing and the exchange of competitively sensitive information.