

Questions and Answers

1. How was the case discovered?

The case was discovered as a result of a complaint received.

2. How did the cartel conduct take place?

According to the Commission's investigation, from December 2015 to December 2019, two senior engineers at Analogue and a senior manager at Shun Hing engaged in frequent communications including through emails and phone texting when responding to requests for tender or quotation (RFQs) from customers. In those communications they sought and agreed to provide cover bids (referred to as 'Pig Quotes'), shared information about their intentions to bid, and/or disclosed commercially sensitive information on their intended bidding price or other parameters of the bid such as the number of days required to complete the works that were tendered for.

The Commission has reasonable cause to believe that the above-mentioned conduct amounts to serious anti-competitive conduct in the form of price-fixing, market-sharing, and/or bid-rigging, in contravention of the First Conduct Rule of the Competition Ordinance.

3. What products or services were involved in the RFQs? How big was the scale of the infringement?

The Commission believes that Analogue and Shun Hing have engaged in continuous infringement over a period of more than four years, which potentially impacted their sales of a wide range of air-conditioning works such as the installation of central air-conditioners, replacement of components such as pipes and chillers, as well as their day-to-day maintenance with an overall value of around HK\$2 billion.

4. What is the harm and who are the victims of this cartel?

The suspected cartel reduced the choices and potentially increased the costs of air-conditioning works for the public sector, owners of commercial buildings and residential homes who had called for the RFQs.

5. Why are Analogue Holdings Limited and Shun Hing Holdings Co., Ltd also named as respondents in this case?

Analogue Holdings Limited and Shun Hing Holdings Co., Ltd are the parent companies of ATAL Building Services Engineering Limited and Shun Hing Engineering Contracting Company Limited respectively. It is the Commission's case that they form part of the same undertaking as their subsidiaries and are therefore also liable as primary contraveners of the First Conduct Rule.

The liability of parent companies as members of the same undertaking has been reiterated by the Court of Appeal's judgment on pecuniary penalties in another case¹ recently, which affirmed that

¹ See the Commission's [press release](#) dated 2 June 2022.

the Commission may, in addition to parties which directly participated in the contravention, bring action against any entity comprised in the same undertaking for the full unmitigated penalty.

The case today serves as a strong reminder that parent companies in corporate groups need to ensure compliance of the Ordinance by their subsidiaries, and to have appropriate compliance programmes or measures in place towards that end.

6. Why are two senior engineers of Analogue and a senior manager of Shun Hing named as respondents in the case, but not higher or top management of the two undertakings?

The two senior engineers at Analogue and the senior manager at Shun Hing are pursued for their involvement in the contravention of the Competition Ordinance. In particular, they were the ones who had engaged in frequent and continuous collusive communications with each other during the relevant period.

Under section 91 of the Ordinance, a person involved in a contravention of a competition rule is a person who 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.

7. How challenging was the investigation of this case?

During investigation, the Commission made use of a broad range of its compulsory powers under the Competition Ordinance, including obtaining documents and information, requiring people to attend before the Commission, and searching premises with warrants. The investigation team reviewed almost a million documents, making it one of the biggest cartel cases ever handled by the Commission in terms of the quantity of evidence.

8. What penalty and consequences would companies and individuals face if they are found to have contravened the Competition Ordinance?

Maximum penalties of a contravention of the Competition Ordinance for an undertaking include a pecuniary penalty of up to 10% of the 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 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.