

Questions and Answers

On the case

1. How was the case discovered? Was it from a complaint made by the public?

The case was discovered as a result of a complaint from a member of the public.

2. When did the Commission receive the complaint?

The complaint was received in August 2017, subsequent to the public attention generated by the Commission's filing of the market sharing and price fixing case on 14 August 2017 in relation to the provision of renovation services at a public rental housing estate in Kwun Tong, Kowloon.

3. How many units are involved? When did it take place?

The allegation was in relation to the provision of interior renovation services for at least 178 units at King Tai Court in San Po Kong, Kowloon, around June to November 2017.

4. What are the procedures to be taken before the case is brought to the Tribunal? When will the case be heard?

The proceeding has started with the Commission filing the Originating Notice of Application today and the case is now before the Competition Tribunal (Tribunal).

The hearing will occur after the various intermediate steps (such as the discovery process) have occurred. The date when the hearing ultimately occurs will depend on when all the relevant steps are completed and will be fixed by the Tribunal.

5. What is the penalty for both undertakings and individuals if they are found guilty?

Maximum penalties of a contravention of the 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.

6. Will the cartel be considered anti-competitive if residents are free to hire companies other than the companies in question for renovation and there is still competition in the market?

Under the Ordinance, cartel agreements between competitors that seek to fix prices, share markets, restrict output or rig bids are serious anti-competitive conducts which are considered inherently harmful to competition. As such, these cartel conducts, irrespective of whether they cover the entire market, are considered to have the object of harming competition. The Commission is therefore not required to demonstrate that the agreements have harmful effects in the market in order to establish a contravention of the Ordinance.

7. As there are still a large number of renovation contractors in the market, in no way can the companies in question monopolise the market, how can they contravene the law?

Cartel conducts such as market sharing are universally considered to be harmful to competition regardless of how big or small the relevant participants are. This is reflected from the fact that market sharing is considered to be a serious anti-competitive conduct under the Ordinance to which the exemption for smaller businesses does not apply. Businesses, big or small, should never agree with their competitors to share markets or fix prices.

General

8. How many complaints / enquiries has the Commission received so far? How many are renovation related? How many are on market sharing / price fixing?

As at the end of August 2018, the Commission has received over 3,200 complaints and enquiries and they were across a wide variety of sectors including the building maintenance and renovation sector. Nearly 30% of the complaints and enquires received were on alleged cartel conduct including market sharing and price fixing.

9. Under what circumstances will individuals be liable?

Under the Ordinance, a person being involved in a contravention of a competition rule means a person who:

- (a) attempts to contravene the rule;
- (b) aids and abets, counsels or procures any other person to contravene the rule;
- (c) induces or attempts to induce any other person, whether by threats or promises or otherwise, to contravene the rule;
- (d) is in any way, directly or indirectly, knowingly concerned in or a party to the contravention of the rule; or
- (e) conspires with any other person to contravene the rule.”

The Ordinance provides that the Tribunal may order that a person who has been involved in a contravention of a competition rule to pay pecuniary penalty.

10. Why did the Commission include individuals in the case when it can pursue the responsible companies?

Holding companies accountable by obtaining pecuniary penalties is not the only means to accomplish the Commission's goal of deterring and ending cartels. Companies cannot act on their own. Every corporate contravention involves individual wrongdoing. For that reason, to deter a company from engaging in cartel conduct, it is also necessary to deter the individuals through which the company acts. Individual pecuniary penalties and disqualification are necessary deterrents.

11. Will front line staff / junior staff be prosecuted if they are found involved in the contravention? What should they do if they are being instructed by their seniors to do so?

As stated in the Commission's Enforcement Policy, insofar as the Commission may take action against individuals who are involved in anti-competitive conduct, its priority will be to focus on those involved who are in the management of the contravening company or otherwise directed the cartel conduct, rather than frontline staff who follow their directions.

A clear commitment to competition and compliance with the law is required from the very top to bottom of an organisation, from the strategic decision making to the day-to-day operations of the business. Senior management and those managing or directing key aspects of a company's work have the responsibility to ensure that their staff of all levels understand and comply with the Ordinance.

Employees who are instructed by their seniors to engage in anti-competitive practices should approach the Commission (Tel: 3462 2118) or seek independent legal advice if in doubt.

12. What if the employees get fired after making a complaint to the Commission?

Under the Ordinance, individuals under an employment contract are protected from termination, discrimination, intimidation and harassment by their employers for assisting the Commission in carrying out its functions.