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For Immediate Release

Competition Commission publishes Policy on Recommended Pecuniary Penalties for anti-competitive conduct

The Competition Commission (Commission) today published a policy on recommended pecuniary penalties (Policy) for anti-competitive conduct. The Policy outlines the general principles and methodology the Commission adopts when making recommendations to the Competition Tribunal (Tribunal) on the level of fines for businesses that have contravened, or have been involved in the contravention of the First Conduct Rule or the Second Conduct Rule of the Competition Ordinance (Ordinance).

Consistent with the framework provided in the Ordinance, when formulating a recommendation to the Tribunal on the level of pecuniary penalty in different cases, the Commission will generally take into account the severity of the contravention and the need to achieve effective deterrence. Due credit will be given to those who cooperate with the Commission. While the Commission will recommend an amount of pecuniary penalty it considers appropriate, it is ultimately for the Tribunal to determine the penalty amount to be imposed.

In line with the principles above and the Tribunal's first judgment on pecuniary penalties, the Policy sets out a 4-step approach to the formulation of a recommended pecuniary penalty¹ for businesses and business associations, with key elements as follows:

Step 1 – Determining the base amount

To determine the base amount, the Commission will consider:

- the value of the business's sales related to the contravention in Hong Kong;
- the seriousness of the conduct; and
- the duration of the contravention.

Step 2 – Making adjustments for aggravating, mitigating and other factors

The Commission will consider factors that may lead to an increase or decrease of the base amount. These are:

- aggravating factors, such as a business acted as a leader, or directors were involved in the conduct;
- mitigating factors, such as a business's participation in the contravention was limited;
- whether the company was previously found to have contravened the Ordinance;
- the loss or damage, if any, caused by the conduct;

¹ The Commission will generally apply the methodology set out in the Policy when determining a pecuniary penalty recommendation but may depart from it according to the particularities of each case.

- the need to achieve deterrence; and
- whether the penalty recommended is just and proportionate in the circumstances of the case.

Step 3 – Applying the statutory cap

Where the amount calculated after carrying out the above two steps exceeds the maximum pecuniary penalty under the Ordinance i.e. 10% of the undertaking's total turnover in Hong Kong for each year of the contravention up to a maximum of 3 years, the Commission will adopt the statutory maximum as the recommendation, subject to any adjustments in Step 4.

Step 4 – Applying cooperation reduction

Where a business cooperates with the Commission, a cooperation reduction² will, if applicable, be applied as a final adjustment to the amount calculated.

Mr Brent Snyder, CEO of the Commission, said, “The consequences of engaging in anti-competitive conduct can be serious. This is exemplified by the Tribunal’s first judgment on pecuniary penalties in a cartel case, where seven of the ten convicted companies were ordered to pay the maximum fines and all ten companies were made to pay the Commission’s costs. We are pleased that, in this case, the Commission’s recommended framework for assessing pecuniary penalties was largely accepted by the Tribunal.

By issuing the Policy, the Commission seeks to ensure consistency across cases and provide transparency on the determination process of its pecuniary penalty recommendations. Together with the Commission’s leniency and cooperation programmes, this policy forms a comprehensive framework for businesses engaged in cartels to assess the benefits of coming forward and cooperating with the Commission, thus strengthening enforcement and enhancing deterrence.”

The Policy on Recommended Pecuniary Penalties is available on the Commission’s website at www.compcomm.hk.

² In the case of cartel conduct, the cooperation reduction will be determined in accordance with the Commission’s *Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct*.