

21 December 2020

For Immediate Release

Competition Commission brings first case on abuse of substantial market power to Competition Tribunal

The Competition Commission (“Commission”) has today filed a case in the Competition Tribunal (“Tribunal”) against Linde HKO Limited (“Linde HKO”) and Linde GmbH¹ (collectively referred to as “Linde”²), for abusing Linde’s substantial degree of market power in the medical gases³ supply market in Hong Kong to the detriment of competition in the downstream medical gas pipeline system (“MGPS”) maintenance market.

The Commission is also pursuing the General Manager of the relevant division of Linde HKO, Mr. Tse Chun Wah, for his active involvement in the contravention within the meaning of section 91 of the Competition Ordinance (“Ordinance”).

The Commission alleges that between October 2015 and January 2018, Linde ceased or limited the supply of medical gases to MGI (Far East) Limited (“MGI”), the only other potential MGPS maintenance service provider for public hospitals. By leveraging its de facto monopoly position in the medical gases supply market into the downstream MGPS maintenance market, Linde engaged in various exclusionary acts, from unjustified denial of supply of medical gases necessary for carrying out the MGPS maintenance services, to the imposition of various arbitrary and/or unreasonable trading terms so that MGI could not compete and/or perform for MGPS maintenance services contracts.

The Commission also alleges that Mr. Tse was actively involved in formulating and executing the various exclusionary acts of Linde.

The Commission is seeking orders including:

- a declaration that Linde HKO and Linde GmbH, as parts of a single undertaking, have contravened the Second Conduct Rule of the Ordinance and that Mr. Tse is a person involved in the contravention;
- an order for pecuniary penalties to be imposed on Linde HKO, Linde GmbH, and Mr. Tse; and
- a disqualification order against Mr. Tse for up to 5 years.

¹ Leave of the Court will be sought to serve the Originating Notice of Application on Linde GmbH, which is a company based in Germany.

² Linde HKO and Linde GmbH belong to The Linde Group, which is a leading global gas manufacturing and engineering company.

³ Medical oxygen, medical nitrous oxide, Entonox and medical air.

Mr. Samuel Chan, Chairman of the Commission, said, “Hong Kong’s competition regime has reached a pivotal milestone today with the Commission’s filing of the city’s first abuse of substantial market power case in the Tribunal. The need to bring enforcement action in this case was particularly pronounced given the egregious nature of the conduct and the fact that the conduct seriously affected public hospitals which provide close to 90% of hospital services to patients in Hong Kong.”

“The Commission is committed to enforcing the full spectrum of the Ordinance and will spare no effort to go after anti-competitive conduct that inflicts significant harm to competition in Hong Kong, regardless of the size of the companies that are involved in such practices.”

The Commission calls for businesses in all sectors to steer clear of anti-competitive practices. All parties aware of such practices, including victims of abusive behaviour, are encouraged to report suspected cases to the Commission at 3462 2118.
