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For Immediate Release

Competition Commission brings first case on resale price maintenance to Competition Tribunal

The Competition Commission (“Commission”) today commenced proceedings in the Competition Tribunal (“Tribunal”) against The Tien Chu (Hong Kong) Company Limited (“Tien Chu”) for its engagement in resale price maintenance (“RPM”) in supplying monosodium glutamate (“MSG”) powder, specifically “Finger Citron Ve-Tsin Gourmet Powder” (“Gourmet Powder”), to its two main local distributors.

RPM occurs whenever a supplier establishes a fixed or minimum resale price to be observed by its distributors, including retailers, when they resell the product. RPM prevents distributors or retailers from competing with each other by offering lower prices, which will result in harm to competition in many cases.

It is the Commission’s case that since the Competition Ordinance (“Ordinance”) came into full effect on 14 December 2015 until at least 27 September 2017, Tien Chu continued to give effect to and/or engage in RPM arrangements, which began in 2008, by establishing minimum resale prices for the Gourmet Powder to be charged by its two main local distributors at the time. Tien Chu did so by issuing notices, reminders and warnings to ensure the distributors would not sell its Gourmet Powder for less than a particular price. When one of the distributors began to complain to Tien Chu in 2016 that the other distributor (discounter) was snatching customers with lower pricing, Tien Chu acted upon the complaints and took steps to secure compliance with the resale prices it set, which included the use of disincentives, threats and/or penalties.

The Commission has reasonable cause to believe that Tien Chu engaged in RPM conduct which had the object of harming competition in Hong Kong in contravention of the First Conduct Rule under the Ordinance, and constituted serious anti-competitive conduct as defined in the Ordinance.

Given that this was the first RPM case intended to be brought to an enforcement outcome under the Ordinance, the Commission attempted to resolve the matter by issuing an infringement notice¹ to Tien Chu with specific requirements to be fulfilled. Tien Chu did not agree to offer a commitment to comply with those requirements, thus resulting in the current proceeding against it.

¹ Pursuant to section 67(2) of the Competition Ordinance, the Commission may, instead of bringing proceedings in the Competition Tribunal against a person in the first instance, issue an infringement notice offering not to bring those proceedings on condition that the person makes a commitment to comply with the requirements of the notice. The Commission may begin proceedings in the Tribunal when a person refuses to make a commitment to comply with the requirements of the notice.

The Commission is seeking remedies before the Tribunal, including:

- A declaration that Tien Chu has contravened the First Conduct Rule;
- An order for pecuniary penalty to be imposed on Tien Chu;
- An order prohibiting Tien Chu from engaging in any conduct that constitutes the contravention;
- An order requiring Tien Chu to adopt an effective compliance programme; and
- Orders for the recovery of the Commission’s litigation and investigation costs.

Mr. Rasul Butt, Chief Executive Officer of the Commission, said, “The Commission is aware that RPM may give rise to significant harm to competition in certain cases. By bringing the city’s first RPM case to the Tribunal, the Commission wishes to demonstrate its determination to tackle RPM arrangements that have the objective of undermining competition by limiting the ability of resellers to compete on price, and which may harm consumers in the end.”

“The Commission is committed to pursuing the full spectrum of conduct which may contravene the Ordinance and will spare no effort in going after anti-competitive conduct that inflicts significant harm on competition in Hong Kong,” Mr. Butt added.
