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For Immediate Release

Competition Commission takes first cartel case relating to government subsidy scheme to Competition Tribunal

The Competition Commission (“Commission”) has today commenced proceedings in the Competition Tribunal (“Tribunal”) against four undertakings and three individuals, namely:

- **Multisoft Limited** and its parent company **MTT Group Holdings Limited** (“Multisoft”);
- **BP Enterprise Company Limited** and **Noble Nursing Home Company Limited** (“BP/Noble”);
- **KWEK Studio Limited** (“KWEK”);
- **Ms. AU YEUNG Kit Yee** (“Ms. Au Yeung”), trading as **Yat Ying Hong** (“Yat Ying”) and in her personal capacity;
- **Mr. FAN Sing Chi**, a representative of Yat Ying and BP/Noble (“Mr. Fan”); and
- **Mr. TANG Wai Chun**, a director and shareholder of KWEK (“Mr. Tang”).

The proceedings relate to a contravention of the Competition Ordinance (“Ordinance”) taking place between May 2020 and September 2021. It is the Commission’s case that the four undertakings Multisoft, BP/Noble, KWEK and Yat Ying engaged in practices including cover bidding¹ when providing quotations for IT solutions in applications for government subsidy under the Distance Business Programme (“D-Biz”)². The Commission has reasonable cause to believe that such conduct amounts to serious anti-competitive conduct in the form of price-fixing, market-sharing, bid-rigging and/or sharing competitively sensitive information, in contravention of the First Conduct Rule of the Ordinance.

The Commission is seeking remedies before the Tribunal, including:

- A declaration that each of the undertakings has contravened the First Conduct Rule and that Ms. Au Yeung, Mr. Fan and Mr. Tang are persons involved in the contravention;
- Orders for the imposition of pecuniary penalties;
- Orders for the recovery of the Commission’s costs of investigation and proceedings;
- Orders requiring each of the undertakings to adopt an effective compliance programme as the Tribunal considers appropriate; and
- Director disqualification order against Mr. Tang.

¹ Cover bidding occurs when certain bidders agree to submit bids with higher prices or less attractive (or unacceptable) terms than the bid of the designated winner.

² D-Biz was a funding scheme launched by the Innovation and Technology Commission under the Government’s Anti-Epidemic Fund to support local enterprises to adopt IT solutions to continue their businesses and services during the COVID-19 epidemic. The Hong Kong Productivity Council was the Secretariat of the programme.

One of the respondent undertakings, BP/Noble, has agreed to admit liability and entered into a cooperation agreement with the Commission under the Commission's *Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct*³.

In June 2020, the Hong Kong Productivity Council ("HKPC") referred various complaints relating to D-Biz to the Commission after suspecting that its procurement process may have been targeted by anti-competitive conduct. Upon considering the complaints received, the Commission requested HKPC to provide it with data of all D-Biz applications received at that time for the purpose of conducting a data screening exercise to identify any suspicious bidding patterns that could be indicative of anti-competitive conduct. The data provided by HKPC covered around 14,000 applications. After careful analysis of the data, the Commission identified a range of unusual bidding features that warranted initiation of a formal investigation.

During the course of the Commission's investigation, apart from uncovering evidence that supports the Commission's case that the respondents have contravened the Ordinance, the Commission has also found evidence suggesting that certain individual(s) may have committed criminal offence(s) including forgery and the provision of false or misleading documents or information. These matters have been referred to the Police for criminal investigation.

Mr. Rasul Butt, Chief Executive Officer of the Commission, said, "In many sectors, government funding and sponsorship provide much needed support and in some cases actual lifelines to businesses operating under difficult operating environments. Any attempt to exploit such important efforts through anti-competitive means needs to be confronted head-on and this is one of the Commission's top priorities. By bringing to court the city's first competition case involving the abuse of a government-sponsored COVID-19 subsidy programme today, the Commission is making it clear that it stands ready to jointly tackle potential cases of abuse with government departments and organisations charged with managing public funds. There are altogether 189 D-Biz applications affected in this case, with approved government funding totalling around HK\$13 million.

Screening of data is central to this case. The analysis of extensive bidding data led to suspicious bidding patterns and features being identified and which informed the Commission's direction of investigation. To further safeguard tender processes that involve public funding, the Commission welcomes any opportunity to assist government departments and public bodies through conducting similar data screening of projects involving the procurement of public goods or services, or subsidy schemes set up to help Hong Kong businesses."

The Commission would like to reiterate that businesses should never agree with their competitors to rig bids, fix prices, share markets or exchange competitively sensitive information. Those applying for and receiving subsidies are reminded to be vigilant during the procurement process and to guard against potential anti-competitive practices. Those already involved in cartel conduct should approach the Commission for leniency or cooperation.

³ See the Commission's [Cooperation Policy](#) published in April 2019.

HKPC's vigilance against potential anti-competitive conduct in the administration of the D-Biz scheme should be recognised and the Commission would like to register its thanks to both the Innovation and Technology Commission and the HKPC for rendering full assistance to the Commission throughout the investigation.
