

For information
27 June 2022

**LEGISLATIVE COUNCIL
PANEL ON ECONOMIC DEVELOPMENT**

Report on the Work of the Competition Commission

Purpose

This paper presents an overview of the activities of the Competition Commission (Commission) since the last report in June 2021 and provides an outlook for 2022-23.

Overview

2. Despite the ongoing challenges posed by the pandemic, the Commission has managed to achieve a number of milestones across different aspects of its work in the past year. In particular, the key achievements of the Commission are as follows –

- (a) brought four cartel cases before the Competition Tribunal (the Tribunal) against a total of 11 undertakings and seven individuals for suspected serious anti-competitive conducts¹ concerning the sale of mail inserters, procurement of cleaning services for public housing estates, the sale of tourist attractions and transportation tickets, and air-conditioning works;
- (b) conducted a first joint enforcement operation with the Organized Crime and Triad Bureau (OCTB) of the Hong Kong Police against a property management company and a number of contractors concerning a suspected cartel in a building maintenance project tendering exercise and other suspected criminal activities;

¹ Serious anti-competitive conducts include (a) fixing, maintaining, increasing or controlling the price for the supply of goods or services; (b) allocating sales, territories, customers or markets for the production or supply of goods or services; (c) fixing, maintaining, controlling, preventing, limiting or eliminating the production or supply of goods or services; and (d) bid-rigging.

- (c) openly invited information from industry players and other members of public for two ongoing investigations concerning online food delivery platforms and passenger car warranty terms and conditions;
- (d) published a Policy on Commitments under section 60 of the Competition Ordinance² (the Ordinance) to provide clarity and guidance to the legal and business communities on the procedural aspects of the Commitment process and factors that the Commission will consider when deciding whether Commitment is an appropriate remedy in certain investigation cases;
- (e) published an Advisory Bulletin on the potential competition risks under the Ordinance relating to membership admission criteria and procedures of trade, sporting, professional and industry associations or bodies; and
- (f) organised the first Academy on Competition Law and Policy together with the Chinese University of Hong Kong (CUHK), including a three-day online programme for over 600 lawyers, compliance practitioners and business representatives, as well as in-person training to over 80 administrative officers (AOs) recruited in recent years.

Relevant key achievements are set out at Annex A.

3. The Commission's enforcement, policy and advocacy efforts in the past year are detailed in the ensuing paragraphs.

Key Enforcement Statistics

4. Key enforcement statistics of the Commission are summarised below –

² Section 60 of the Ordinance provides that the Commission may accept a commitment to take or refrain from taking any action appropriate to address concerns about a possible contravention of a competition rule and, in return, will not commence or continue an investigation or bring or continue proceedings in the Tribunal in relation to any alleged contravention of a competition rule relating to matters that are addressed by the commitment.

	Since December 2015 ³	Since June 2021
Initial assessment commenced	241	16
<i>Complaints</i>	<i>180</i>	<i>9</i>
<i>Referrals / Other Cases of the Commission's own volition</i>	<i>61</i>	<i>7</i>
Investigation commenced	49	6
Enforcement outcomes	15	4
<i>Proceedings at Tribunal</i>	<i>11</i>	<i>4</i>
<i>Non-litigation Remedies</i>	<i>4</i>	<i>0</i>

Complaints and Investigations

Initial Assessment

5. A key function of the Commission is to investigate conduct that may contravene the competition rules and enforce the provisions of the Ordinance. At the same time, the Commission may conduct an investigation under the Ordinance only if it has reasonable cause to suspect (RCS) that there is a possible contravention of a competition rule under the Ordinance, whether of complaints received, of referrals from the Government and public bodies, or of the Commission's own volition (e.g. suspicions identified from public enquiries or on the Commission's own initiative otherwise).

³ The Ordinance fully commenced on 14 December 2015.

6. The Commission receives and reviews around 200 to 300 complaints each year⁴. However, many of the complaints are found to be misconceived, lacking in substance or trivial, etc.. Under the Ordinance, the Commission is not required to investigate these complaints⁵.

7. The Commission will first conduct an initial assessment of other complaints, as well as other cases of its own volition and by referral, to ascertain whether the required RCS exists that would allow investigation to begin. Since June 2021, the Commission has commenced initial assessment of 16 new cases.

8. Under the Ordinance, the Communications Authority (CA) has jurisdiction over anti-competitive conducts concerning the telecommunications and broadcasting sectors. Since June 2021, the Commission has referred eight cases in relation to the telecommunications / broadcasting sector to the CA⁶ for follow up.

Investigation

9. Once the Commission is satisfied that the required RCS exists based on findings made during initial assessment, it may commence an investigation and make use of its investigation powers under the Ordinance⁷ to gather documents and information from relevant parties. Since June 2021, the Commission has commenced investigation into suspected anti-competitive conducts in six new cases across a variety of industries including real estate and property management, fuel and energy resources, banking, financial and insurance products and services, information technology, telecommunications, and food and groceries industries.

10. The Commission adopted new investigation and enforcement strategies during the past year. For the first time, input was invited from the

⁴ From June 2021 to May 2022, the Commission received 224 complaints (2 229 since December 2015), with alleged cartel conduct, resale price maintenance and exchange of information being the complainants' major concerns.

⁵ Section 37 of the Ordinance provides that the Commission is not required to investigate a complaint if it does not consider it reasonable to do so and may, in particular, refuse to investigate a complaint if it is satisfied that the complaint is trivial, frivolous or vexatious; or the complaint is misconceived or lacking in substance.

⁶ Since December 2015, the Commission has referred a total of 154 cases in relation to the telecommunications / broadcasting sector to the CA.

⁷ Examples of investigation powers include requiring persons to produce documents or information, requiring persons to attend before the Commission to answer questions, and entering and searching relevant premises with warrant. During initial assessment, any information the Commission requires can only be sought from relevant parties on a voluntary basis.

public to assist investigation. In January and March 2022, the Commission called on relevant parties and industry players of online food delivery platforms and car repair and maintenance markets respectively to provide information which may help assess potential anti-competitive conducts in these industries. The feedback received was encouraging. The Commission will continue to invite public input in suitable cases in future.

11. The Commission has also conducted joint operations with other law enforcement agencies for the first time. In January 2022, the Commission and the OCTB of the Hong Kong Police conducted a joint operation which involved a search of premises of a property management company and some bidding contractors who are suspected of having engaged in anti-competitive conduct in the tender exercise for a building maintenance project of an industrial building in Tuen Mun. In addition, the Commission has referred a suspected case of obstruction of the Commission's search, which is a criminal offence under the Ordinance, in another case to the Police for follow up.

Enforcement Outcomes

12. Following investigation, where the Commission has reasonable cause to believe that a contravention has taken place, it may commence proceedings in the Tribunal for pecuniary penalties or disqualification orders, or adopt suitable non-litigation remedies, depending on the nature and facts of each case.

Competition Tribunal

13. Since June 2021, the Commission has commenced new proceedings in the Tribunal in four cases, against a total of 18 undertakings and individuals as respondents. Details are as follows –

- (a) In November 2021, the Commission commenced proceedings in the Tribunal against three undertakings for alleged cartel conduct regarding the sale of mail inserters which are used extensively by the public and private sectors in Hong Kong. This is the first case where all subject companies cooperated with the Commission during the investigation stage, and the first case fully resolved under the Commission's Cooperation and Settlement Policy.
- (b) In December 2021, the Commission commenced proceedings in the Tribunal against two undertakings and three individuals for alleged

exchange of commercially sensitive information to fix prices in tenders for cleaning services of 17 public housing estates and buildings managed by the Hong Kong Housing Authority (HKHA).

- (c) In January 2022, the Commission commenced proceedings in the Tribunal against four undertakings and one individual regarding a price-fixing cartel in the travel services sector. This is the first case where the nature and facts of the case prompted the Commission to utilise a wide range of remedies available under the Ordinance to resolve relevant competition concerns effectively and proportionately, including issuing infringement notices to early cooperating parties⁸, seeking settlement with parties that offered cooperation at a later stage which resulted in joint applications to the Tribunal seeking orders including pecuniary penalties and director disqualification, and taking non-cooperating parties to the Tribunal.
- (d) In June 2022, the Commission commenced proceedings in the Tribunal against two undertakings and three individuals. The undertakings concerned allegedly rigged bids, fixed prices and shared markets in their responses to requests for quotation or tender in the supply of air-conditioning works in Hong Kong.

14. Including the above cases, the Commission has so far brought 11 cases to the Tribunal against a total of 55 undertakings and individuals as respondents, and was successful in all five cases already ruled by the Tribunal so far. A summary of the Tribunal's decisions in the above-mentioned cases is at Annex B.

15. In June 2022, the Court of Appeal handed down a judgment in favour of the Commission in relation to the Commission's appeals against pecuniary penalties imposed by the Tribunal in its earlier decisions concerning suspected market sharing and price fixing by undertakings in renovations projects at two public housing estates in Hong Kong (On Tat Estate and On Tai Estate). The Court of Appeal agreed with the Commission's views and ruled that five respondent construction and engineering companies, which had lent their HKHA licences to other subcontractors in the said renovations projects, should not be given a lower pecuniary penalty solely because it was their subcontractors who had entered into the market sharing and price fixing agreements and the

⁸ In February 2021, enforcement actions against seven other parties were resolved with the Commission issuing and all of them accepting Infringement Notices for acting as facilitators in the cartel.

respondents had no direct participation in the cartel. The judgment also affirmed that the Commission may proceed against entities comprised in an undertaking for the full unmitigated penalty, in addition to parties that directly participated in the contravention themselves.

Non-litigation Remedies

16. Since December 2015, the Commission has adopted non-litigation remedies in four cases, including accepting commitments in accordance with section 60 of the Ordinance and issuing an infringement notice under section 67 of the Ordinance as enforcement outcomes.

Block Exemption Orders

17. Under certain circumstances, the Commission may issue a block exemption order (BEO) in respect of a particular category of agreements, excluding the application of the First Conduct Rule under the Ordinance to these agreements. The Commission issued a BEO in August 2017 in regard to vessel sharing agreements among liner shipping companies, which is due to expire in August 2022. After review, the Commission published a notice in May 2022 inviting interested parties to submit representations on the proposed renewal of the BEO for four years. A final decision will be made by the Commission after consideration of the representations.

Enforcement Policy and Advisory Documents

18. To address key aspects of its enforcement approach, the Commission has adopted various enforcement policy documents over the years. In this connection, the Commission published its fifth policy document in November 2021, concerning Commitments under Section 60 of the Ordinance, providing guidance and encouraging businesses to make commitment offers where appropriate.

19. In addition, to encourage and assist businesses to be ready, willing and able to comply with the Ordinance, the Commission issues advisory bulletins on specific competition concerns from time to time. In July 2021, the Commission published its fourth advisory bulletin with practical scenario-based examples to advise trade, sporting, professional and industry association or bodies, etc. on when and how membership admission criteria to such association or bodies may contravene a competition rule under the Ordinance.

Policy Advisory and Public Sector Engagement

20. Another important statutory function of the Commission is to advise the Government on competition matters. Since June 2021, the Commission has provided advice to various government bureaux and departments and public bodies on over 30 public policies and initiatives. Examples include bus franchises, tenancy control on subdivided units, wet market stalls auction, procurement for property management, etc.

21. To further foster the pro-competition culture and mindset among policy makers and sectoral regulators, the Commission collaborated with the Civil Service Bureau and organised a training programme in November 2021 on competition law and policy for over 80 AOs recruited in recent years.

Public Advocacy and Education

22. The Commission continued its momentum to increase public awareness of the Ordinance and to promote compliance through various types of outreach and engagement events. Despite the impact of the pandemic, the Commission has held over 50 engagement briefings, workshops and media events in either physical or online format since June 2021. Whilst some of these events provide a general overview of the Ordinance for members of the public, others are bespoke events for specific target audience, such as professional bodies and particular trades including building management, construction, tourism and hotels, finance, etc..

23. In November 2021, the Commission co-organised its first Academy on Competition Law and Policy with the Faculty of Law of CUHK. As part of the Academy, the three-day online event received overwhelming support and positive feedback from over 600 lawyers, compliance practitioners and business representatives.

24. The Commission continued to incentivise undergraduate and postgraduate students to develop stronger interest and deeper understanding of the competition law and to promote its research in Hong Kong. In the past year, the Commission collaborated with the Faculty of Law of CUHK and the School of Law of the City University of Hong Kong and organised essay and presentation contests with specific focus on the competition law.

25. Two public education campaigns were launched during the year –
- (a) In July 2021, riding on the Tokyo Olympic Games, the Commission rolled out a campaign featuring TV, radio and online announcement supported by promotion on social media, reminding businesses the importance of competition and encouraging them to report anti-competitive conduct to the Commission.
 - (b) In November to December 2021, to mark the sixth anniversary of the full commencement of the Ordinance, a series of advertorials and videos was published in key local print and online media highlighting the impact of the competition regime on different sectors / aspects of the society. A press conference was held in December 2021 on the work of the Commission in the past six years.
26. The Commission also strengthened the use of social media during the year with around 170 feeds about the competition law and the Commission's work posted on its Facebook Page, Instagram and LinkedIn accounts.

Outlook

27. Enforcement of the Ordinance will remain a key focus of the Commission. The Commission will continue to direct its resources to investigations and enforcement actions that result in the greatest overall benefit to competition and consumers in Hong Kong, with a particular emphasis on three areas –

- (a) The Commission will continue to accord priority to investigate anti-competitive conducts concerning livelihood issues or affecting the more vulnerable groups (e.g. lower income groups), as such behaviours are particularly egregious.
- (b) The Commission will combat in particular cartelists targeting public funding who seek to benefit themselves at the expense of others in Hong Kong. To this end, apart from cartels that target procurement contracts of government departments and public bodies, the Commission will also accord priority to cases involving government funding or subsidy schemes, particularly those set up to help Hong Kong businesses.

- (c) With the booming digital economy, competition enforcement agencies worldwide are turning their attention to conducts affecting digital markets. The pandemic has further accelerated the trend of businesses going digital. The Commission anticipated that more cases concerning digital markets will require its attention in the years to come.

28. The Commission has also commissioned a study on the online retail sector in Hong Kong, with an aim to fully understand its landscape and the potential competition problems therein, including factors that may hinder the development of the sector and practices that may dampen competition.

29. The Commission will continue its drive to actively engage businesses and the public through continuous outreach and educational initiatives across multiple platforms. To allow the public a more thorough understanding of the first few cases which the Commission has filed with the Tribunal (including some of those already heard and decided), the Commission has joined hands with Radio Television Hong Kong in the production of a docudrama series showcasing these cases. Subject to the pandemic situation, the series is expected to be aired by the end of 2022 the soonest.

30. In addition, the Commission will continue to pay attention to the development of relevant laws and regulations in the Mainland, and accordingly take forward the work with the Guangdong Administration for Market Regulation to jointly publish a brochure on the key principles of the respective competition laws applicable in the Mainland and Hong Kong, to promote understanding of and compliance with competition laws among businesses operating in the Greater Bay Area.

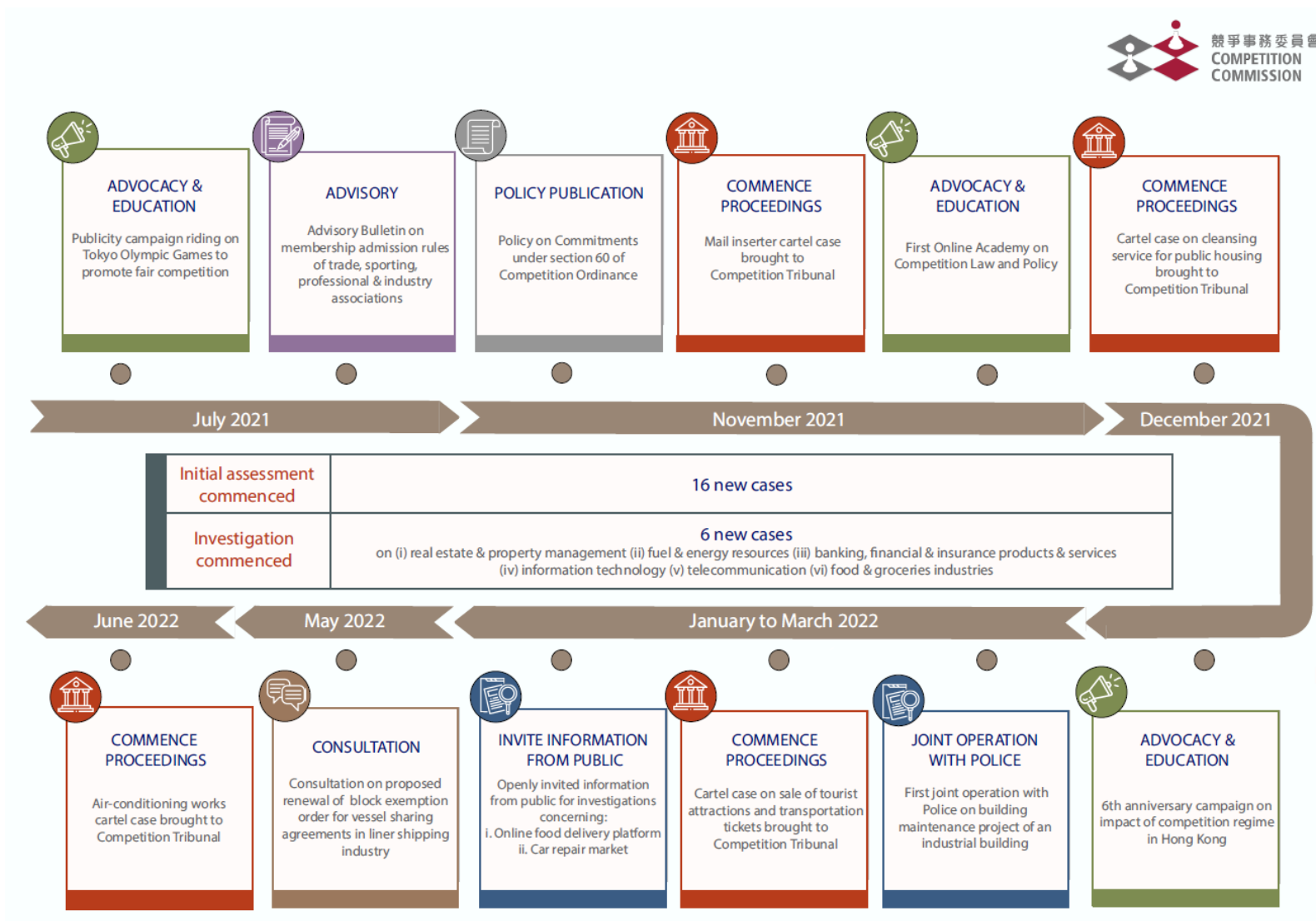
31. Despite constraints limiting physical events during the pandemic, the Commission will continue to engage its stakeholders through webinars and online events, as well as to further strengthen the use of social media in reaching a wider audience.

Advice Sought

32. Members are invited to note the report above.

Competition Commission
June 2022

Commission's Key Achievements since June 2021



Decisions of the Competition Tribunal in the First Five Cases

Date	Tribunal Decision
May 2019	<p>Decoration contractors on the Housing Authority's Reference List agreed to solicit works from different floors and agreed the price of pre-determined decoration packages in relation to the provision of renovation services at Phase 1 of On Tat Estate in Kwun Tong.</p> <p>The Tribunal found ten construction companies liable for contravening the First Conduct Rule of the Ordinance by engaging in market sharing and price fixing.</p> <p>Subsequently, the Tribunal handed down its first judgment on pecuniary penalties against these ten decoration contractors in April 2020. Seven of them were ordered to pay the maximum pecuniary penalty allowable under the Ordinance¹, and all ten contractors were made to pay the Commission's costs of the proceedings.</p> <p>The Commission appealed against the pecuniary penalties imposed by the Tribunal on three contractors. In June 2022, the Court of Appeal ruled in favour of the Commission, resulting in higher pecuniary penalties on the three contractors.</p>
May 2019	<p>An information technology (IT) company submitted a bid in response to an invitation to tender for the supply and installation of a cloud-based server system for YWCA. The cloud server company then helped the IT company procure additional 'dummy-bids' to satisfy the tender requirement of a minimum of five bids, with a view to letting the IT company win.</p>

¹ The maximum pecuniary penalty of a contravention of the Ordinance is up to 10% of the undertaking's annual Hong Kong turnover per contravention for a maximum period of three years.

Date	Tribunal Decision
	<p>The Tribunal found four respondent IT companies liable for contravening the First Conduct Rule of the Ordinance by engaging in bid-rigging.</p> <p>Subsequently, the Tribunal handed down a judgment in December 2020 ordering the four IT companies to pay pecuniary penalties and the Commission's cost of the proceedings.</p>
July 2020	<p>Decoration contractor cartel in relation to the provision of renovation services at King Tai Court in San Po Kong. The Tribunal found that the five respondents (construction / engineering companies and related individuals) had contravened or involved in the contravention of the First Conduct Rule of the Ordinance by engaging in market sharing and price fixing. Ruling on penalties and cost is pending.</p>
October 2020	<p>Decoration contractor cartel in relation to the provision of renovation services at Phase 1 of On Tai Estate in Kwun Tong. The Tribunal found that the nine respondents (construction companies, engineering companies, metal shops and related individuals) had contravened or involved in the contravention of the First Conduct Rule of the Ordinance by engaging in market sharing and price fixing.</p> <p>Subsequently, the Tribunal handed down judgment on sanctions in this case in January 2021, involving the first fine on an individual and the first director disqualification order issued under Hong Kong's competition regime.</p> <p>The Commission appealed against the pecuniary penalties imposed by the Tribunal on two construction and engineering companies. In June 2022, the Court of Appeal ruled in favour of the Commission, resulting in higher pecuniary penalties on the two companies.</p>

Date	Tribunal Decision
November 2020	<p>Two parties exchanged price sensitive information and discussed who would win the bid in response to an invitation to tender by Ocean Park for procuring software and IT services.</p> <p>The Tribunal found that the Respondents (one undertaking and one individual) had contravened or were involved in the contravention of the First Conduct Rule of the Ordinance by engaging in the exchange of future pricing information amounting to price fixing.</p> <p>The Tribunal ordered the undertaking to pay a pecuniary penalty and that both Respondents pay the Commission's costs of proceedings on a joint and several basis.</p> <p>It is the first case in which the Commission and the Respondents reached agreement to resolve both the liability and relief portions of the proceedings by consent, and did so at an early stage, saving both sides significant time and costs. The orders sought by the Commission and the Respondents in the joint application was granted by the Tribunal.</p> <p>It is also the first set of proceedings in Hong Kong's competition regime resulting from a successful leniency application.</p> <p>The Commission also made use of an infringement notice as a remedy for the first time, in order to resolve the matter with respect to another undertaking, which also participated in the cartel conduct. That other undertaking accepted the infringement notice and committed to strengthen its competition compliance programme. As a result, it was not named as a respondent in the proceedings.</p>