

The Competition Ordinance & Trade Associations



競爭事務委員會
COMPETITION
COMMISSION



The Competition Ordinance

promotes competition and economic growth by prohibiting anti-competitive conduct by businesses. Anti-competitive conduct includes agreements between competitors that harm competition.

Trade associations serve an important function in furthering their members' interests. They have a vital role to play in educating their members on the Competition Ordinance and promoting a pro-competitive compliance culture. Trade associations facilitate interaction between members and must themselves also be aware of their obligations under the Competition Ordinance.

Contraventions of the Competition Ordinance can lead to serious consequences for trade associations and their members.

This pamphlet provides practical tips on what trade associations should and should not do to minimise the risk of contravening the Ordinance.



Dos

1. Continue to help members understand developments relevant to their industry and promote their industry's interests to government and customers.
2. Educate members on the Competition Ordinance.
3. Establish a Competition Ordinance compliance policy for the association; appoint or nominate an officer to oversee the compliance efforts of the association.
4. Exercise care when collecting information from members and avoid facilitating the sharing of *competitively sensitive information* (see also point 6 under 'Don'ts'). Information should be handled by the staff of the association or a third party, independently from members. Information which is historic and disseminated in an aggregated, anonymised format is less likely to be problematic. [See Example 1]
5. Ensure that membership of the association is based on clear, objective and qualitative criteria; set up an appeal procedure for refusal to grant or suspension of a membership.
6. If your association certifies or awards quality labels to members to recognise that they have met certain industry standards, ensure that such certifications are based on objective and reasonable quality requirements and available to all that meet those requirements. [See Example 3]
7. If your association is involved in setting standard industry terms relating to the supply of products or services, ensure that any standard-setting process is open and that the terms do not affect the price charged to customers. The standard terms should also be non-binding and effectively accessible to members and non-members. [See Example 4]



Don'ts

1. Don't recommend or require that members set particular prices for their products or particular fees for their services.
2. Don't impose restrictions on members with regard to the other terms and conditions on which they sell their products (for example, by fixing credit terms of sale).
3. Don't help members divide up their sales territories, including by geographic areas, types of customers or types of products.
4. Don't set or recommend production targets for members.
5. Don't coordinate or facilitate collusive tendering by members.
6. Don't help members share competitively sensitive information, i.e. strategic information that a business normally doesn't want its competitors to know, with each other. Generally, information relating to the price (including future pricing intentions) and quantities of members' products or services is the most competitively sensitive. [See Example 2]
7. Don't organise or encourage a boycott by members against targeted individuals / businesses. [See Example 5]
8. Don't have rules or codes restricting or reducing competition among members, for example, imposing terms that members should not solicit employees from competitors, or rules limiting members' discount/promotional activities.
9. Don't use arbitrary rules to admit and/or expel members.
10. Don't prevent members from developing alternative standards or providing products that do not comply with the association's standards.

Hypothetical Example 1

The only five suppliers of pre-packaged fresh fruit in Hong Kong are facing considerable wastage of unsold products, as demand is unstable over seasons. To address the issue, they ask their trade association



to hire an independent market research company to collate unsold fruit data. Each week, the company publishes on its website the consolidated data so as to allow suppliers to better predict demand. Individual suppliers or the staff of the trade association are not able to identify a particular supplier's competitively sensitive data.

The trade association asks the Competition Commission if there is any problem with members exchanging information in this way.

*The Commission is **unlikely** to consider that this information exchange harms competition. The aggregated and historic nature of the information exchanged, and the fact that the information is exchanged in public makes it less likely that harmful effects will arise.*



Hypothetical Example 2

A trade association for junk owners collects from and circulates to its members information on their proposed future prices. This includes information on the proposed prices they



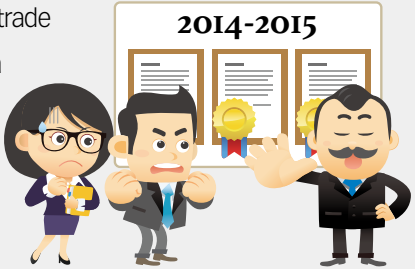
will be charging for specific journeys. The information is not made available to the public and is circulated in advance of a seasonal price review by the association members.



This arrangement would give rise to serious concerns for the Commission and liability could result for the trade association and its members. The information exchange allows the junk owners to adjust their future pricing to reflect the proposed pricing of competitors and thus reduces price competition in the market. The information exchange arrangement is an indirect form of price fixing.

Hypothetical Example 3

For many years a local trade association organised a certification scheme which “endorsed” its members’ products. Such an endorsement is a critical factor in consumers’ purchasing decisions, and products without certification have very little demand.



Recently the trade association decided to include a minimum turnover threshold in the membership requirements following a meeting which was attended only by a few large members. As a result, a number of smaller members are no longer eligible for membership and can no longer get their products “endorsed”. They lose a lot of sales.

The Commission would have significant concerns with this conduct and liability could result for the trade association and its members. The rule change seems intended to exclude smaller market participants from the trade association. The change may force some of the smaller companies out of business altogether, potentially allowing the larger competitors to raise their prices.



Hypothetical Example 4

A trade association in the insurance sector circulates non-binding standard policy terms for car insurance to members.

The terms do not relate to the maximum coverage, premiums

or other price elements. A large number of insurers use

the standard terms, but contracts are varied and tailored

to individual client needs. The standard terms have the

advantage of allowing consumers to compare the various

policies on offer in the market. The standard terms are

accessible to all insurers on equal terms including potential new entrants.



*The Commission is **unlikely** to have concerns regarding these standard terms. Although these terms relate to the scope of the product sold to consumers, the harm to product variety, if any, appears limited. The insurance policies that adopt such standard terms are still tailored to individual customer needs. The standard terms may also encourage competition as they allow consumers to compare the various products on offer, facilitate switching between insurers and assist new companies to enter the market.*

Hypothetical Example 5



Companies active in a particular manufacturing industry in Hong Kong rely on a variety of specialist recruitment agencies to source staff from overseas. HireMe Ltd recently entered the market with a new and innovative business model. HireMe acts as an intermediary consolidating the services of the different specialist agencies, giving its clients the option of a “one-stop shop”.

After HireMe entered the market, a trade association which includes major specialist recruitment agencies in Hong Kong as members (but not HireMe) arranged a meeting to discuss the impact of HireMe in the market. During the meeting, members agreed to immediately terminate all existing contracts, and to refrain from entering into further contracts, with HireMe. They agreed to ensure that their overseas branches do likewise.

In other words, the trade association has organised a targeted boycott against HireMe, aiming at excluding HireMe from the market. The Commission would have serious concerns with this conduct and liability could result for the trade association and its members.





To learn more about how the Competition Commission interprets and enforces the Competition Ordinance, please consult our Guidelines and other guidance materials, which are available on our website www.compcomm.hk.



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Disclaimer

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