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For Immediate Release

Competition Commission launches educational campaign on “Exchange of Sensitive Information”

The Competition Commission (Commission) launches a citywide educational campaign (Campaign) today to enhance public awareness and businesses’ understanding of potential issues concerning “Exchange of Sensitive Information” under the Competition Ordinance (Ordinance). Through a series of publicity initiatives, the Commission aims to remind businesses of the potential competition risks resulting from the exchange of commercially sensitive information and encourage compliance across all sectors.

It is entirely normal for businesses in the same trade to exchange information on certain matters in the course of their daily operations. For example, sharing information relating to best practices on employee safety standards or discussions about public policies and regulatory matters in general would not pose any risk to competition. However, exchanging commercially sensitive information such as prices, customers or costs, in particular future pricing intentions with competitors can harm competition. This is because sharing such information would make it easier for competitors to predict and therefore align with each others’ behaviours, thereby allowing competitors to substitute practical cooperation for effective competition. Such conduct may contravene the Ordinance, and businesses that disclose or receive commercially sensitive information are both equally at risk.

Among the 15 cases brought by the Commission before the Competition Tribunal (Tribunal) to date, five involved the exchange of commercially sensitive information in different sectors. In four of these cases, the Tribunal has ruled that all respondents contravened or involved in the contravention of the Ordinance, while the remaining case is pending trial.

Whether the exchange of information would raise concerns under the Ordinance depends on the circumstances of the case, which include:

- **The degree to which the information is commercially sensitive:** information relating to prices and quantities is generally the most commercially sensitive
- **The age of the information:** sharing future or current information is more likely to raise concern than sharing historical information
- **The level of detail of the information:** sharing individualised or company-specific information is more likely to harm competition than sharing aggregated and anonymised information
- **Characteristics of the market:** where a relevant market only consists of a few market players, exchanging information in such a market is more likely to harm competition
- **Frequency of the information exchange:** frequent exchanges are more likely to be problematic

Apart from exchanging commercially sensitive information directly with competitors, businesses may also exchange such information through a third party, such as a trade association, a supplier or a distributor. Since this is likely to have the same harmful effect as exchanging the information directly,

such behaviour would be treated in the same way under the Ordinance. In such cases, the third party could also be liable for being a party to the information exchange.

Mr. Rasul Butt, Chief Executive Officer of the Commission, said, “To the public in general, the impact of exchanging commercially sensitive information on competition may not be as obvious as other forms of anticompetitive conduct such as bid-rigging or price-fixing, but such conduct likewise does have the potential of inflicting harm on competition and consumers. From our past engagement with businesses, especially small and medium-sized enterprises, we understand that there is a need for them to communicate with other enterprises in the same trade in their normal course of business. But at the same time, they are worried about the possibility of contravening the Ordinance when they share sensitive information. To address their concern, the Campaign launched today will provide practical information and guidance to help businesses identify and avoid such risks.”

“Apart from businesses needing to watch out for the potential risks arising from exchanging sensitive information, trade associations should also be aware of such risks and handle the issue with care. Hong Kong has a large number of trade associations covering different professions and industries and there is no doubt that these associations have been contributing significantly to our city’s economy. However, as these associations facilitate interaction between competitors, due care must be taken to avoid arrangements that may give rise or provide support to anti-competitive practices. To this end, the Commission has compiled a handy guide for trade associations and their members on how to steer clear of such risks during trade association meetings.”

The Commission officially kicks off the Campaign today with the premiere of a new TV announcement and a three-episode romance short drama, “*Forbidden Secrets*”, featuring artistes Philip Ng and Kandy Wong. In tandem, the Commission has also published a brochure that explains the conduct in an easy-to-understand manner, with hypothetical examples illustrating different scenarios for businesses’ reference. A roving exhibition and thematic seminars on the topic will be organised at a later stage.

The Commission has also prepared a one-page guide outlining the points to note for trade associations when they prepare for and conduct their meetings. Trade associations are encouraged to distribute the guide to their members for reference.

The above-mentioned materials are now available on the Commission’s website (www.compcomm.hk). Details of the seminars will be announced on the website in due course.

Photos:



Mr. Rasul Butt, Chief Executive Officer of the Competition Commission (left) and Dr. Gary Shiu, Executive Director (Policy & Advocacy) of the Competition Commission (right)



The Commission published a brochure on “Information Exchange”



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Philip Ng and Kandy Wong starred in the romance short drama “*Forbidden Secrets*”