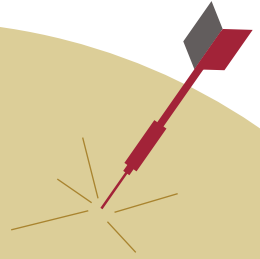




競爭事務委員會
COMPETITION
COMMISSION

COMBAT PRICE FIXING CARTELS





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How do we benefit from competition?

In a free market economy, businesses compete with each other to attract customers by offering the best range of products and services at the best prices. This leads to lower prices, better products and often more choices for consumers. Competition in a market also enhances business efficiency and facilitates innovation.

However, some businesses may seek to avoid competition by, for example, agreeing to cooperate with each other rather than compete. Where businesses agree with their competitors to fix prices, rig bids, share markets or restrict output, it is referred to as “*cartel conduct*”. Cartel conduct is generally regarded as a particularly harmful form of anti-competitive conduct as it deprives consumers, businesses and the economy as a whole of the benefits brought by competition.

The Competition Ordinance (Ordinance) was enacted to promote competition and prohibit such practices by businesses.



What is a price fixing cartel?

Price fixing is when businesses which are competitors agree to fix, increase, lower, maintain or control the price for the purchase or sale of goods or services. It may involve competitors agreeing upon a specified price, a price range or a formula to calculate prices, and “price” in this context includes any element of price.



Common types of price fixing cartels

In a price fixing cartel, competitors might agree to:

- Adhere to a specified price or a price range
- Fix a certain amount/percentage of price increases
- Fix elements of price such as discounts, rebates, promotions, credit terms or other advantage relating to the purchase or sale of products or services





- Adopt a standard formula to calculate prices/ margins
- Eliminate or reduce discounts
- Maintain floor prices, a certain profit margin or a price schedule
- Maintain certain price differentials between different sizes, quantities or types of products or services
- Not to quote a price without consulting competitors
- Not to charge less than any other prices in the market



Price fixing cartels can be achieved directly among competitors or through intermediaries (such as common customers), verbally or in writing, including via electronic group chats. Some other indirect means include:



Activities of trade associations or professional bodies

Price fixing might arise through the activities of a trade association or professional body. For example, the association might issue a recommendation to its members on prices and/or publish (possibly non-binding) fee scales for members. These practices will likely be assessed as having the object of harming competition.

It is worth noting that while the Ordinance may not apply to some trade associations/professional bodies because of their status as exempt statutory bodies, their members may not enjoy such exemption and may risk enforcement action by the Commission should they engage in anti-competitive conduct.



Exchange of information on future price intentions

Exchange of competitively sensitive information between competing businesses may raise concerns under the Ordinance. If businesses exchange information on their future intentions relating to price, the Commission will likely consider it as a form of price fixing.



The harm of price fixing cartels

Price fixing cartels can occur in any industry or sector. When businesses collude to fix prices, it deprives consumers of the benefits of competition, leading to higher prices, lower quality of products and services as well as reduced choices for consumers.

Price fixing cartels can also harm any businesses that rely on those cartelists for the supply of goods or services. It can therefore affect the whole supply chain, and result in higher prices for other goods and services.

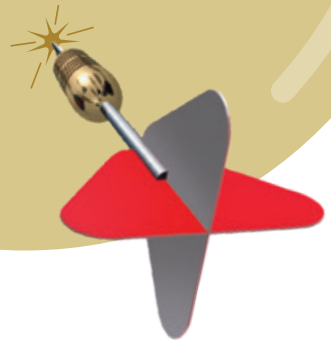
Hypothetical examples



1

A number of construction material suppliers hold a conference call to discuss their response to the falling demand in the market and the pressure from their customers to reduce prices as a result of a slowdown in the construction industry. Those on the call agree that, to prevent “too much” undercutting in the market, they should adhere to the same price range for the most popular items and would not offer a discount of more than 5% for the less popular items despite pressure from customers to do so. This allows them to protect margin even if sales volumes decline.

By collectively adhering to a specified price range and fixing the maximum discount, particular elements of price have been agreed by the suppliers when these matters should be determined independently. The Commission is likely to consider that such conduct has the object of harming competition. The fact that they have acted in response to their concerns about a downturn in the industry will not protect them from enforcement action.



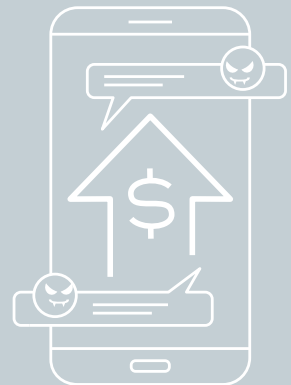


2

Before fees are finalised, the Administrator of a private school sends an instant message to a group of fellow administrators in other similar schools. She asks whether they plan to increase fees at their school for the following year. Some respond with precise figures of their proposed increase, some say they plan to increase but do not have a figure and others stay silent. There is no further discussion or attempt to agree on a particular increase.

By sharing their future pricing intentions, the private schools may not have entered into an agreement but are still likely to have engaged in a concerted practice. The Commission would likely consider such concerted practice as having the object of harming competition as a form of price fixing. By knowing the intention of other schools before finalising their own fees, those on the group chat would not need to worry about being undercut by a competitor. They, therefore, may be able to increase fees where they might not otherwise have done so.

Even those who did not respond to the message are at risk of being included in the Commission's investigation and any subsequent enforcement actions. To mitigate risks, they should leave the discussion, publicly distance themselves from the matters discussed and make it clear that they do not intend to use or act on the information that was exchanged. They should also report their concerns to the Commission.



Myths about price fixing

MYTH

Suppliers in a market charging the same or similar prices is a consequence of price fixing.

FACT

The existence of the same or similar prices for a product is not necessarily the result of a price fixing cartel. It may be the outcome of a competitive market.

For instance, in markets where the product sold is the same or very similar (such as produce in a wet market), prices among businesses naturally tend to gravitate towards the same price. This is because when one business charges slightly higher, it may easily lose its customers to its competitors. And when it charges a lower price, its competitors will quickly follow and match its price.

This is sometimes known as “parallel pricing” and does not require any arrangement between competitors to occur.

MYTH

Businesses may share pricing plans with each other in order to reduce price volatility and maintain an orderly market.

FACT

Competitively sensitive information, especially future intentions or plans with respect to prices, should never be shared or exchanged with competitors. Doing so may reduce independent decision-making by businesses with regard to their actions in the market, and may be considered as price fixing by the Commission. Maintaining an “orderly market” or reducing price volatility are not valid reasons for sharing competitively sensitive information.

MYTH

Businesses with little market power will not contravene the Ordinance by fixing prices.

FACT

Price fixing is a form of serious anti-competitive conduct under the Ordinance to which the exemption for smaller businesses does not apply. Businesses, big or small, should never agree with their competitors to fix prices.

Price fixing red flags

There are no simple indicators of the existence of a price fixing cartel but purchasers may look out for some suspicious signs:

- ❖ Quotes are much higher than expected
- ❖ Prices from different suppliers change in the same amount or percentage at the same time, with no relation to the underlying costs
- ❖ A new supplier's price is much lower than the usual suppliers
- ❖ Prices from different suppliers stay identical for long periods of time, especially when they were previously differentiated
- ❖ Discounts are eliminated, especially in a market where discounts were previously available
- ❖ Suppliers refer to "industry practice" to argue against offering discounts or other more favourable terms
- ❖ Alternative suppliers appear reluctant to engage or offer discounts to win your business
- ❖ Prices remain high despite trading conditions (e.g. decrease in market demand) indicating that prices should be falling

Consequences of a contravention

Price fixing is a form of serious anti-competitive conduct under the Ordinance. It is considered to have the object of harming competition and therefore the Commission is not required to prove that the conduct has or is likely to have harmful effects in order to establish a contravention of the Ordinance. The Commission considers price fixing cartels to be one of its enforcement priorities.

If the Commission considers that price fixing conduct has occurred and that the Ordinance has been contravened, it may commence proceedings in the Competition Tribunal (Tribunal).

Penalties

Where a contravention of the Ordinance is proven, the Tribunal may impose a pecuniary penalty of up to 10% of an undertaking's annual local turnover for a maximum period of three years. The Tribunal may also impose penalties on individuals including pecuniary penalties and a disqualification order that a person may not be or continue to be a director of a company for up to five years.

Victims of a price fixing cartel may also pursue "follow-on" claims for damages after any act has been determined to be a contravention of a conduct rule under the Ordinance.

What can you do when you suspect price fixing?

Members of the public, employees, businesses, trade organisations, government departments and other public organisations are invited to report any suspected price fixing cartel to the Commission.

Do the right thing – Report your suspicions

- ✓ Complainants and whistleblowers are important sources for identifying possible price fixing cartels. The Commission will accept complaints and queries in any form, including those provided to the Commission directly and/or anonymously, or through an intermediary (such as a legal adviser).
- ✓ When reporting a suspected price fixing cartel to the Commission, complainants and whistleblowers should provide the Commission with as much information as possible. Information which is particularly useful includes communications in relation to the price fixing, records of conversations (in any form including instant messages) and written log of relevant events. Preserve all available evidence as soon as you suspect price fixing.



DO NOT indicate to the suspects or make public the fact that you are making a complaint to the Commission. If a price fixing cartel is in operation, this will alert the cartel members and may substantially reduce the prospect of the Commission securing sufficient evidence to take enforcement actions.

How to report a price fixing cartel to the Commission?

A complaint can be made to the Commission by:

-  Completing an online complaint form on the Commission's website www.compcomm.hk
-  complaints@compcomm.hk
-  +852 3462 2118
-  Competition Commission
19/F South Island Place, 8 Wong Chuk Hang Road,
Wong Chuk Hang, Hong Kong
-  In person at the Commission's office (by appointment only)

Apply for leniency or cooperation

Price fixing cartel members – or those who support them – may face severe penalties under the Ordinance. However, the Commission will not commence proceedings in the Tribunal against the **first** undertaking or individual who self-reports the cartel conduct to the Commission and meets all other requirements for receiving leniency. This includes **not** seeking a pecuniary penalty or for an order declaring that the successful leniency applicant has contravened the Ordinance. Employees and officers of an undertaking that obtains leniency will also be protected from proceedings if they cooperate with the Commission's investigation.

Cartel members which do not benefit from the leniency policies may also cooperate with the Commission in exchange for a discount of up to 50% off the pecuniary penalty the Commission would otherwise recommend to the Tribunal.

The Commission's cartel leniency policies and cooperation policy are available on its website www.compcomm.hk.



How to apply for leniency or cooperation?

Call Leniency Hotline at **+852 3996 8010** between 8am and 6pm, Hong Kong time, Monday to Friday (excluding public holidays)

Send email to **Leniency@compcomm.hk**

In ongoing investigations, contact the relevant Case Manager for cooperation

Confidentiality

The Commission will generally seek to protect any confidential information provided to the Commission which includes:

- The identity of complainants, whistleblowers and leniency/cooperation applicants
- Any confidential information provided by complainants, whistleblowers and leniency/cooperation applicants
- The leniency/cooperation application process, including the respective agreement

Leniency/cooperation applicants must in turn commit to keeping their contact with the Commission confidential.

More information

To learn more about the Competition Ordinance and the Competition Commission's work, please visit our website www.compcomm.hk.





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Disclaimer

The information provided in this brochure is for general reference only. It does not provide an exhaustive guide to the application of the Competition Ordinance (Ordinance). For a complete and definitive statement of the law, refer to the Ordinance itself. The Competition Commission (Commission) makes no express or implied warranties of accuracy or fitness for a particular purpose or use with respect to the above information. The above suggestions will not affect the functions and powers conferred on the Commission under the Ordinance.

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