競爭快訊 Competition Matters

第 11 期 Issue No.11 2/ 2020

競爭事務委員會 COMPETITION COMMISSION

行政總裁的話 Message from CEO



冼博崙 Brent Snyder
行政總裁 Chief Executive Officer

2019 年第四季，競爭事務委員會（競委會）在多方面的工作均取得進展。2020 年伊始，競委會就一宗資訊科技合謀案件入稟競爭事務審裁處（審裁處），並發出違章通知書。這是競委會首個源於企業成功申請寬待而入稟的個案，是我們執法工作的一個重要里程碑；這亦是競委會首次向涉案企業發出違章通知書。

去年 10 月，競委會公布了一項決定，確定香港科研製藥聯會擬進行的一項藥物銷售調查，不會憑藉《競爭條例》（《條例》）下的「經濟效率豁除」而不受「第一行為守則」規管。競委會於理由陳述書中，進一步釐清交換影響競爭的敏感資料可能會引起的競爭問題，並就其如何詮釋「經濟效率豁除」，提供了實用指引。在政策倡導方面，我們於 12 月就政府建議的專營的士方案，向立法會提交了意見書，就如何修訂方案以鼓勵競爭提出實質建議，並促請政府擴大行業改革，讓乘客能在點對點交通服務方面，充分享受競爭帶來的好處。

期內，我們繼續透過會議、講座、商貿展覽，以及新一輪的中學生互動工作坊，聯繫不同的持份者。在國際層面，競委會代表出席了數個地區性及國際性反壟斷會議，從中向海外相關機構汲取經驗，亦同時分享競委會的所知所歷。

The Commission made progress on various fronts in the last quarter of 2019 and started 2020 with the filing of an IT cartel case before the Competition Tribunal and also issuing an infringement notice regarding the conduct. These are the Commission's first proceedings stemming from a successful leniency application marking an important enforcement milestone for the Commission. It is also the first time the Commission issued an infringement notice as a remedy.

Last October, the Commission published a decision finding that a proposed pharmaceutical sales survey is not excluded from the first conduct rule by the economic efficiency exclusion under the Competition Ordinance (Ordinance). In its Statement of Reasons, the Commission provided further clarity on its approach towards exchanges of competitively sensitive information as potentially anti-competitive conduct and laid out practical guidance on its interpretation of the economic efficiency exclusion. On the policy front, we submitted our views on the Government's proposed Franchised Taxi Scheme to the Legislative Council in December recommending pro-competition changes to the Scheme as well as calling for wider reforms of the industry, with the aim of allowing passengers to enjoy the full benefit of competition in point-to-point transportation services.

During the period, we continued to engage our various stakeholders through meetings, seminars, trade shows and a new wave of interactive workshops for secondary schools. Internationally, representatives of the Commission participated in regional and international antitrust conferences where we drew on the learning and experience of our counterparts globally, and at the same time shared those of the Commission with the participants.

首個源於寬待申請的入稟個案
First proceedings from successful leniency application

2020 年 1 月 22 日，競委會在審裁處向 Quantr Ltd (Quantr) 及其董事展開法律程序。競委會指稱，Quantr 與另一名投標者（**寬待**申請者），在海洋公園公司於 2017 年為採購 Nintex 資訊科技服務而進行的一次招標中，就雙方的報價意向交換了敏感資料，影響競爭。

競委會曾向 Quantr 提出，以帶有若干規定的違章通知書[1] 來處理其法律責任，唯 Quantr 拒絕承諾遵守相關規定，競委會遂對 Quantr 及其董事提出起訴。另一方面，同樣參與了是次合謀行為的軟件供應商 Nintex Proprietary Limited (Nintex)，接受了競委會發出的違章通知書，並承諾採取措施加強其競爭合規計劃，因此免被起訴。

競委會是從 Quantr 以外的另一名投標者得知有關合謀行為，該名投標者根據《寬待政策》成功申請寬待，競委會因此沒有對該投標者、其高級人員或僱員提出起訴。

這是競委會首個源於企業成功申請寬待而入稟的個案，是其執法工作的一個重要里程碑。這亦是競委會首次向涉案企業發出違章通知書，競委會認為採用這個補救方法恰當，並與本案的情況相稱。

本案清楚帶出了一個訊息：所有互相競爭的企業，都應避免交換敏感資料，尤其是未來價格意向。已牽涉入該等行為的人士，應立即致電寬待熱線 +852 3996 8010，聯絡競委會申請寬待或提供合作。

On 22 January 2020, the Commission commenced proceedings in the Tribunal against Quantr Ltd (Quantr) and its director. The Commission alleges that Quantr and a co-bidder (leniency applicant) exchanged competitively sensitive information regarding their intended quotations in a bidding exercise organised by the Ocean Park Corporation in 2017 for the procurement of IT services based on Nintex technology.

The Commission attempted to resolve the matter by issuing an infringement notice[1] to Quantr which specified certain requirements. Quantr did not agree to make a commitment to comply, resulting in the current proceedings against it and its director. On the other hand, software supplier Nintex Proprietary Limited (Nintex), which also participated in the cartel conduct, accepted the infringement notice offered by the Commission and committed to take steps to strengthen its competition compliance program. As a result, Nintex was not named as a respondent in this case.

The case was brought to the Commission's attention by Quantr's co-bidder who made a successful leniency application under the Commission's Leniency Policy. Neither the co-bidder nor any of its officers or employees are named as respondents in the current proceedings.

These are the Commission's first enforcement proceedings resulting from a successful leniency application, which is an important enforcement milestone for the Commission. This is also the first time the Commission makes use of an infringement notice as a remedy, which it considers to be appropriate and proportionate to the circumstances in this case.

This case sends home a message that all competing businesses should steer clear of the exchange of sensitive information, in particular future price intentions. Those already involved in such conduct should approach the Commission for leniency or cooperation by calling the Leniency Hotline at +852 3996 8010.

---

[1] 根據《競爭條例》，競委會有權向涉嫌違反競爭守則的人士發出違章通知書，以取代在審裁處展開法律程序。若該人士承諾遵守違章通知書的規定，則可免被起訴。

Under the Ordinance, the Commission may, instead of bringing proceedings in the Tribunal against a person, issue an infringement notice offering not to bring those proceedings on condition that the person makes a commitment to comply with the requirements of the notice.

就擬進行的藥物銷售調查公布決定
Publication of Decision on proposed pharmaceutical sales survey



競委會於 2019 年 10 月公布了一項決定，確定擬進行的一項藥物銷售調查，不會憑藉《競爭條例》的經濟效率豁除而獲豁除於第一行為守則之外。

是項決定是因應香港科研製藥聯會（製藥聯會）提交的申請而作出。製藥聯會乃一行業組織，其會員提供香港超過七成的處方藥物。是次申請涉及製藥聯會擬進行的季度調查，過程中會收集港澳兩地的處方及非處方藥物的一些銷售數據，有關數據會編製成可供購買的銷售調查報告。

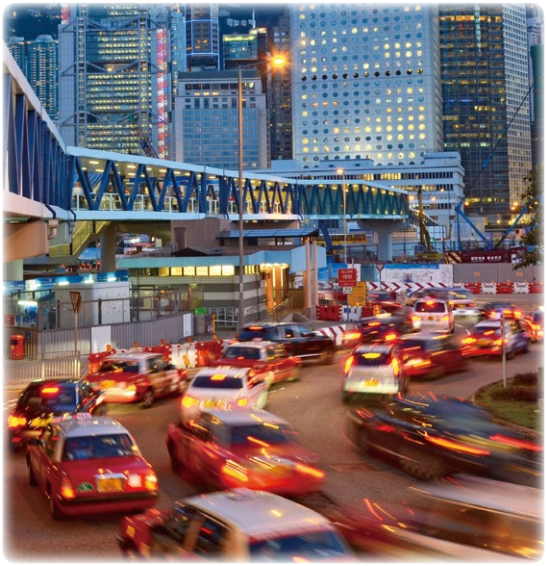
在決定過程中，除了申請本身，競委會亦考慮了在公眾諮詢時所收集到的意見。是項決定及其理由陳述書進一步闡明了競委會在處理競爭對手交換敏感資料時的做法，同時亦就其如何詮釋「經濟效率豁除」，提供了實用指引。

The Commission published a Decision in October 2019 finding that a proposed pharmaceutical sales survey is not excluded from the First Conduct Rule by the Ordinance's economic efficiency exclusion.

The Decision was made in response to an application received from the Hong Kong Association of the Pharmaceutical Industry (HKAPI), an industry association whose members provide over 70% of the prescription medicines in Hong Kong. The Application concerned HKAPI's proposal to conduct a quarterly survey to collect certain data on the sales of prescription and over-the-counter pharmaceutical products in Hong Kong and Macau. The data would then be compiled into a sales survey report available for purchase.

In reaching its Decision, the Commission considered the application as well as the submissions received in the public consultation on the application. The Decision, together with a Statement of Reasons, provide further clarity on the Commission's approach towards exchanges by competitors of competitively sensitive information and practical guidance on its interpretation of the economic efficiency exclusion.

向立法會提交專營的士方案意見書
Submission to Legislative Council on Franchised Taxi Scheme



去年 12 月，競委會就政府建議的專營的士方案，向立法會法案委員會提交意見書，補充其於同年 4 月向政府提供的政策意見。該方案提出以公開招標方式發出三個專營權，在本港引入 600 部優質專營的士。

競委會在建議書中指出，縱使近年的科技發展及其他轉變可為的士業帶來競爭及動力，但政府對這行業的規管，令香港的士服務缺乏競爭，而提升的士服務質素的最佳辦法，是促進市場競爭。

競委會除建議多項修訂以鼓勵競爭，亦促請政府認真考慮擴大行業改革，讓消費者充分享受競爭帶來的好處。

請**按此**瀏覽競委會向立法會提交的意見書全文。

專題 Feature

Last December, the Commission submitted its views to the Bills Committee of the Legislative Council on the Government's proposed Franchised Taxi Scheme, under which 600 premium franchised taxis are proposed to be introduced with three franchises to be granted by open tender. The submission is supplementary to the policy advice it offered to the Government last April.

The Commission pointed out in its submission that government regulation has resulted in competition being excluded from Hong Kong's taxi services despite rapid technological improvements and other changes over time that could bring competitive pressure and dynamics to this sector. The best way to improve the quality of taxi services is by allowing a greater level of competition.

Apart from recommending specific pro-competition changes to the Scheme, the Commission calls on the Government to give serious consideration to wider reforms of the taxi industry, with the aim of allowing consumers to obtain the full benefit of competition.

Click HERE to view the Commission's full submission to the Legislative Council.

宣傳及倡導 Advocacy & Outreach

持續與持份者接觸
Ongoing stakeholder engagement



去年第四季至今，競委會參與了五場由民政事務總署主辦的「大廈管理中央平台」講座，向各區業主講解圍標這議題。在多個新公共屋邨入伙前，競委會亦派員出席了簡介會，向裝修承辦商講解《條例》。此外，競委會亦為企業及公眾人士舉辦了兩場講座。

為進一步接觸青少年，競委會於 2019/2020 學年推出了新一輪中學生互動工作坊，至今已完成了 14 場；另亦於香港中文大學一次課堂中介紹《條例》。

Since the last quarter of 2019, the Commission took part in five briefings organised by the Home Affairs Department's Central Platform on Building Management for homeowners, speaking on the topic of bid-rigging. Representatives of the Commission also spoke at the pre-intake briefings for decoration contractors at several new public housing estates. In addition, two seminars on the Competition Ordinance were held during the period, targeting businesses and the public in general.



To further its youth outreach, the Commission has rolled out a new round of interactive workshops on Competition Ordinance to secondary schools in Hong Kong for the academic year of 2019/2020. A total of 14 school workshops and a lecture at the Chinese University of Hong Kong were conducted during the period.

宣傳及倡導 Advocacy & Outreach

參加「創智營商博覽」
Commission participates in SmartBiz Expo

競委會於 12 月 4 至 6 日參加了香港貿易發展局舉辦的「2019 創智營商博覽」，於展館內設置展板、互動問答遊戲、播放教育短片及派發實用指南，同時亦簡介本港首兩宗競爭法案件的裁決，以提升企業（尤其中小企）對《條例》的認識。



The Commission participated in the SmartBiz Expo held on 4-6 December 2019 by the Hong Kong Trade Development Council. The booth featured display panels, educational videos, brochures and interactive games to help businesses, especially SMEs, understand the Ordinance. An overview of the judgments in Hong Kong's first two competition cases was also displayed at the event.

國際交流活動 International Activities



高級行政總監畢仲明先生 (右二) 在「東盟競爭法會議」中發言。

Senior Executive Director Mr. Rasul Butt (second right) spoke at the ASEAN Competition Conference.

2019 年 10 月，主席胡紅玉女士出席了美國聯邦巡迴上訴法院律師協會於夏威夷舉辦的全球會議系列。是次會議旨在讓世界各地代表就商貿及知識產權展開高級別對話。胡女士在「創新、競爭、市場及信託」的專題討論中發言，重點介紹競爭在鼓勵創新方面所起的作用。

去年 11 月，高級行政總監畢仲明先生出席了在柬埔寨舉行的第八屆東南亞國家聯盟（東盟）競爭法會議，分享競委會在倡導方面的經驗。這是競委會首次獲邀參加東盟競爭專家組的旗艦活動，該活動旨在促進東盟認識競爭政策及相關法律的重要性，以加強東盟的經濟一體化。

In October 2019, the Commission's Chairperson, Ms. Anna Wu, spoke at the US Federal Circuit Bar Association Global Series in Hawaii. The event aims to create a global dialogue at a senior level on fundamental challenges in commerce, trade, and intellectual property. Ms. Wu spoke on the panel "Innovation, Competition, Markets and Trust" highlighting the role of competition in bringing about innovation.

Senior Executive Director Mr. Rasul Butt shared the Commission's experience on competition advocacy in the 8th Association of Southeast Asian Nations (ASEAN) Competition Conference held in Cambodia last November. It was the Commission's honour to be invited for the first time to participate in this flagship event of the ASEAN Expert Group on Competition which aims at building regional awareness on the importance of Competition Policy and Law towards strengthening ASEAN's economic integration.

競爭法學堂 Competition Law Classroom

投訴或舉報的常見疑慮（二）

競委會入稟競爭事務審裁處的首四宗案件，全部都是在接獲受害人或公眾人士的投訴後揭發，而當中首兩宗案件，審裁處已裁定競委會勝訴。這清楚反映了舉報的重要性及其效用。我們今期繼續回應投訴人或告密者在投訴時常有的疑慮。

如我作出投訴，是否需要在競爭事務審裁處作證？
視乎個案的案情，競委會可能會要求你在調查期間提供協助，包括提供個人陳述書。如非必要，競委會不會要求你以證人身份在審裁處作證。

如我發覺僱主可能違反了《條例》，應該怎樣做？若然我向競委會舉報後遭到解僱，應該怎麼辦？
僱員如懷疑僱主從事反競爭行為，應立即聯絡競委會。根據《條例》，按照僱傭合約受僱的人士如協助競委會履行職能，其僱主不得解僱、歧視、恐嚇或騷擾有關僱員。

按此投訴或舉報。

Common concerns about filing complaints (Part 2)

The Commission's first four cases before the Tribunal were discovered as a result of complaints from victims of cartel conduct or members of the public, of which two cases have already been ruled by the Tribunal in favour of the Commission. This is a solid testament to the importance and effectiveness of reporting. Following the previous issue, here are more common queries that complainants or whistle-blowers may have when coming forward.

If I make a complaint, will I be required to testify in the Competition Tribunal?
Depending on the facts of each case, you may be asked to provide assistance in an investigation, including the provision of a personal statement. Unless deemed necessary by the Commission, you will not be asked to testify as witness in the Tribunal.

What should I do if I found that my employer may have contravened the Ordinance? What if I get fired after lodging a complaint with the Commission?
Employees who suspect that his / her employer may have engaged in anti-competitive practices should approach the Commission immediately. Under the Ordinance, individuals under an employment contract are protected from termination, discrimination, intimidation and harassment by their employers for assisting the Commission in carrying out its functions.

Click HERE to file a complaint.



地址 Address 香港黃竹坑黃竹坑道 8 號 South Island Place 19 樓
19/F, South Island Place, 8 Wong Chuk Hang Road, Wong Chuk Hang, Hong Kong
電話 Telephone +852 3462 2118
傳真 Fax +852 2522 4997
電郵 Email enquiry@compcomm.hk
網址 Website www.compcomm.hk

競爭事務委員會 COMPETITION COMMISSION

© 2020 年 2 月 競爭事務委員會（香港）版權所有。
February 2020 Competition Commission (Hong Kong) All rights reserved