

競爭政策諮詢委員會工作報告

**COMPAG**

**Competition Policy Advisory Group Report**

**2023**

( English version )

# 1. Introduction

## Background

The Competition Policy Advisory Group (“COMPAG”) was established in December 1997 to provide a dedicated forum for examining, reviewing and advising on competition-related issues. COMPAG aimed to promote the Government’s policy on enhancing economic efficiency and the free flow of trade through sustainable competition in Hong Kong, thereby bringing benefits to both consumers and the business sector.

2. In 2005, COMPAG appointed the Competition Policy Review Committee (“CPRC”) to review and make recommendations on the future direction for competition policy in Hong Kong. In its report submitted to COMPAG in June 2006, CPRC recommended that a new cross-sector competition law be introduced.

3. Backed by wide public support received in two public consultation exercises conducted in 2006 and 2008, the Government introduced the Competition Bill into the Legislative Council in July 2010. The Bill was passed in June 2012 and became the Competition Ordinance (Cap. 619) (“the Ordinance”), which fully commenced operation on 14 December 2015.

## **Interface between Competition Authorities and COMPAG upon Commencement of the Competition Ordinance**

4. The Ordinance provides a legal framework that prohibits and deters undertakings<sup>1</sup> in different sectors from engaging in conduct which has the object or effect of preventing, restricting or distorting competition in Hong Kong.

5. The Ordinance is enforced by two independent statutory authorities, i.e. the Competition Commission (“the Commission”), and the Communications Authority which has concurrent jurisdiction with the Commission where the broadcasting and telecommunications sectors are concerned. Complaints on anti-competitive conduct relating to the Ordinance are handled by the two authorities.

6. COMPAG, on the other hand, handles complaints on –

- (a) anti-competitive conduct against government entities and bodies or persons that are not subject to the competition rules and enforcement provisions of the Ordinance; and
- (b) non-compliance with conditions and limitations imposed by the Chief Executive in Council (“CE-in-C”) on agreements, conduct and mergers exempted by CE-in-C under the Ordinance<sup>2</sup>.

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<sup>1</sup> An ‘undertaking’ is defined as any entity, regardless of its legal status or the way in which it is financed, engaged in economic activity and includes a natural person engaged in economic activity.

<sup>2</sup> Under the Ordinance, CE-in-C may exempt agreements, conduct and mergers from the application of certain provisions of the Ordinance on public policy grounds or to avoid conflict with international obligations, subject to conditions or limitations that CE-in-C considers appropriate.

## 2. Work of COMPAG in 2023

7. In 2023, COMPAG handled seven cases with details as follows –

### (A) Cases concerning Government Policies and Practices

*Case 1: Complaint about the booking of diving pools managed by the Leisure and Cultural Services Department (case closed)*

8. While COMPAG concluded in 2022 that the complaint was unsubstantiated, it considered that there might be a need for the Hong Kong Underwater Association (now known as Hong Kong China Underwater Association (“HKCUA”)) to set out guidelines for its affiliated dive clubs to follow when endorsing an instructor’s qualification, in order to ensure that no unintended barrier of entry would be created.

9. The Leisure and Cultural Services Department has relayed COMPAG’s observation and suggestion to HKCUA. HKCUA has responded positively to COMPAG’s views and promulgated in April 2024 relevant guidelines for its affiliated dive clubs.

*Case 2: Complaint about the Fire Services Department’s procurement of safety ankle boots (case closed)*

10. The complainant alleged that the Fire Services Department (“FSD”) had since 2017 specified in its tender documents a requirement for a patented design by a specific company. Claiming that copying the particular design for complying with the tender requirements would be an infringement of relevant intellectual property rights, the complainant opined that he would lose the tender by submitting designs other than the specified design even if it could meet other requirements.

11. COMPAG noted that FSD’s mandatory requirements on the design, finishing and features of safety ankle boots under its Technical Specifications were based on objective criteria aimed at offering a reasonable level of protection to the department’s frontline staff, and that FSD’s figures on a specific patented design were clearly stated as “only for reference”. COMPAG also noted from FSD’s most recent tender exercise that samples that were compliant with the mandatory requirements were from brands other than those by the specific company. The complainant’s allegation about such requirements favouring a specific brand or patented design was therefore unfounded.

12. As the case contained no clear and identifiable subject matter directly relating to competition, COMPAG decided that no investigation be undertaken.

*Case 3: Complaint about driving test appointments at a designated driving school (under processing)*

13. The complainant alleged that a designated driving school (“DDS”) in Sha Tin was open to only its students for driving tests, and that in order to take driving tests in the Sha Tin district, learner drivers who took lessons with private driving instructors (“PDIs”) had to make driving test appointments through the DDS. The complainant was of the view that the DDS had made enrolment in its expensive driving courses a prerequisite for making driving test appointments in the district, and considered this barrier imposed by the DDS unfair to PDIs and private driving learners who wish to take driving tests in the district. The complainant accused the DDS of undermining competition.

14. The Transport and Logistics Bureau (“TLB”) has provided information about the case, which will be considered by COMPAG in due course.

**(B) Cases concerning Entities not subject to the Competition Rules and Enforcement Provisions of the Competition Ordinance**

*Case 4: Complaint about the Airport Authority's restriction on the provision of in-flight catering services for private jets (case closed)*

15. While COMPAG concluded in 2022 that the complaint was unsubstantiated, as a related matter, it was concerned about the renewal of franchise agreements with the three existing franchisees in 2013 without an open tender exercise. COMPAG noted that the Airport Authority ("AA") had renewed the concerned agreements upon completing a holistic review in consultation with an external legal consultant and with its Board's approval, but also advised that the Commission should be consulted in relation to similar decisions in future, and that there might also be a need for AA to set out more clearly the considerations from the competition perspective when setting the ceiling on the number of franchisees and length of franchise period.

16. TLB has duly conveyed COMPAG's concerns and suggestions to AA regarding franchise agreements for in-flight catering services at the Hong Kong International Airport as well as future renewals of such agreements. AA has noted COMPAG's views. In future, it will set out more clearly the considerations from the competition perspective when setting the ceiling on the number of franchisees and the length of franchise period, and will consult the Commission as appropriate.

*Case 5: Complaint about the Hong Kong Science and Technology Parks Corporation's lease of land to data centre operators (under processing)*

17. The complainant alleged that the Hong Kong Science and Technology Parks Corporation had leased land to data centre operators at a rental level far below market rates, failed to enforce the lease restrictions that prohibited data centre operator lessees from subletting the leased premises, and allowed the transfer of ownership of such data centre operator lessees to third-party providers. The complainant considered that these would give undue advantages to existing data centre operator lessees and distort competition in the industry.

18. The Innovation, Technology and Industry Bureau ("ITIB") advised in 2022 that the matters under complaint were subject to an on-going judicial review ("JR"). With the conclusion of the JR case in 2023, the COMPAG Secretariat is seeking information from ITIB about the case, which will be considered by COMPAG in due course.

*Case 6: Complaint about the Tung Wah Group of Hospitals' requirements on Fukien priest funeral services at Diamond Hill Funeral Parlour (case closed)*

19. The complainant alleged that the Tung Wah Group of Hospitals ("TWGH") had required him to hire Fukien priests contracted by the Diamond Hill Funeral Parlour ("DHFP") unless he paid an extra fee for hiring self-arranged Fukien priests. The complainant claimed that the extra fee was to protect the interests of DHFP-contracted Fukien priests.

20. COMPAG noted that bereaved families had the free choice of engaging either DHFP-contracted Fukien priests or self-arranged ones. Moreover, TWGH would not charge bereaved families additionally for engaging self-arranged Fukien priests. The complainant's allegation about an extra fee for engaging self-arranged Fukien priests was therefore unfounded.

21. As the case contained no clear and identifiable subject matter directly relating to competition, COMPAG decided that no investigation be undertaken.

*Case 7: Complaint about the Hong Kong Tourism Board's subsidies to the Travel Industry Council of Hong Kong (under processing)*

22. The complainant alleged that the Hong Kong Tourism Board ("HKTB") had given subsidies or an unfair advantage to the Travel Industry Council of Hong Kong ("TICHK"), but not other organisations such as that of the complainant's, for organising training courses for tourist guides. The complainant opined that TICHK was no longer a "public body" since 1 September 2022 when its regulatory functions were taken over by the Travel Industry Authority, an independent statutory body, and thus should no longer receive HKTB's subsidies for organising training courses for tourist guides.

23. The COMPAG Secretariat is seeking information from the Culture, Sports and Tourism Bureau about the case, which will be considered by COMPAG in due course.

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