HONG KONG'S NEW CAMPAIGN TO COMBAT PRICE FIXING CARTELS

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The Competition Commission (Commission) recently launched a campaign to combat price fixing cartels in order to "enhance public awareness and understanding of price fixing and its harm, as well as to encourage compliance and strengthen detection of such conduct" through advocacy and educational initiatives.[1] This campaign comes nearly five years after Hong Kong's Competition Ordinance (Ordinance) came into full effect in December 2015, prohibiting conduct that prevents, restricts, or distorts competition and mergers that substantially lessen competition in Hong Kong.[2]

To date, the Commission has brought six cases[3] before the Competition Tribunal (Tribunal), spanning three types of infringement: bid rigging, price-fixing and market sharing, and exchanging future price-sensitive information. Case selection is driven primarily by complaints received from the public, which is indicative of the Commission's newest campaign to deepen the public's understanding of anticompetitive conduct. "Through the 'Combat Price Fixing Cartels' campaign, [the Commission] hope[s] to drive public awareness of the various forms of price fixing, address common misconceptions and give examples and advice on how to detect it. [They] encourage all businesses to steer clear of price fixing while those already involved in such conduct should come forward for leniency or provide cooperation before it is too late."[4]

This discussion of leniency and cooperation is consistent with the Commission's initial focus and application of encouraging compliance with the Ordinance. The recent *Quantr*[5] case is the first enforcement action to result from a successful leniency application[6] since the Commission's leniency policy was published in 2015.[7] The Commission offered to resolve the issue by way of an infringement notice, whereby the Commission agrees not to bring enforcement proceedings on the condition that the recipient makes a commitment to comply with the requirements of the infringement notice. Prior to the filing of the *Quantr proceedings*, notices were sent to two companies, of which one elected to settle and gave a commitment to adopt an enhanced competition compliance program and the other refused. The refusal to accept the Commission's offer resulted in enforcement proceedings.

The *Quantr* case is significant in that it was the first time the Commission decided to rely upon a variety of alternative enforcement tools before progressing to Tribunal proceedings, in addition to a successful leniency application. Less than a year after the *Quantr* decision, the Commission announced its new campaign to combat price fixing, which is a sign that enforcement of the Ordinance is a priority. According to the Commission, "The Commission will continue to crack down on price fixing cartels which are detrimental to the sustainable development of our economy."[8] It can therefore be expected that Hong Kong will continue to build up its own body of legal precedents through cases brought before the Tribunal and the Commission's own investigatory efforts, with the help of public complaints and detection.

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Should you wish to discuss any of the recent developments highlighted in this alert or are considering undertaking an assessment of your compliance with the Ordinance, please contact us and we will be happy to assist.

FOOTNOTES

[1] *See* Competition Commission, Competition Commission launches "Combat Price Fixing Cartels" Campaign, Nov. 9, 2020.

[2] *See* Competition Ordinance (Cap. 619).

[3] *See Competition Comm'n v. Nutanix & Ors* [2019] HKCT 2 (CTEA 1/2017); *Competition Comm'n v. W. Hing Construction Co., Ltd. & Ors* [2018] 5 HKLRD 437 (CTEA 2/2017); *Competition Comm'n v. Kam Kwong Eng'g Comp. Ltd. & Ors*, [2020] HKCT 3 (CTEA 1/2018); *Competition Comm'n v. Fungs E & M Eng'g Co. & Ors*, [2019] HKCT 3 (CTEA 1/2019); *Competition Comm'n v. Quantr Ltd. and Cheung Man Kit*, [2020] HKCT 3 (CTEA 1/2020); *Competition Comm'n v. T.H. Lee Book Company Ltd. & Ors.*, (CTEA 2/2020); *see* also Competition Commission, Cases in the Competition Tribunal.

[4] *Supra* n. 1.

[5] *Competition Comm'n v. Quantr Ltd. and Cheung Man Kit*, [2020] HKCT 3 (CTEA 1/2020).

[6] Leniency was granted to an unnamed co-bidder who notified the Commission of the cartel. *See Competition Comm'n v. Quantr Ltd. and Cheung Man Kit*, [2020] HKCT 3 (CTEA 1/2020). Hong Kong's Leniency Policy comprises two types of leniency applications: Type 1 Leniency which is available to those that alert the Commission to a cartel that is not currently the subject of an initial assessment or open investigation by the Commission; and Type 2 Leniency which is available to those that provide substantial assistance to the Commission's investigation or enforcement of a cartel that the Commission is already assessing or investigating. *See infra* n. 7.

[7] The Commission published a revised Leniency Policy for Undertakings Engaged in Cartel Conduct, which applies only those engaged in cartel conduct under The Fist Conduct Rule, though the Commission is not precluded from entering into *leniency agreements in respect to other forms of conduct*. *See* Competition Commission, Leniency Policy for Undertakings Engaged in Cartel Conduct, Apr. 2020.

[8] *Supra* n. 1

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