



8 May 2020

For Immediate Release

Competition Commission reminds businesses participating in anti-epidemic subsidy programmes to adhere to the Competition Ordinance

The Competition Commission (Commission) is aware that the Government has recently introduced various subsidy programmes to assist businesses and individuals affected by the COVID-19 outbreak, some of which entail the procurement of goods and services by the subsidy recipients. Against this background, the Commission would like to remind all parties involved in such relief measures, including participating suppliers and businesses receiving the subsidy, of the importance of complying with the Competition Ordinance (Ordinance) and being vigilant against potential anti-competitive practices that may undermine procurement processes.

Advice to suppliers

Under the Ordinance, cartels including bid-rigging, price fixing and market sharing are serious anti-competitive conduct which suppliers should never participate in. Suppliers should also refrain from exchanging competitively sensitive information with each other, whether verbally or in writing (including via electronic group chats). Generally, information relating to prices, quantities and sales to particular customer groups or territories, are the most competitively sensitive, the exchange of which will harm competition and run the risk of contravening the Ordinance.

Businesses engaging in anti-competitive practices will be subject to the Commission's enforcement actions and potentially result in serious consequences. This is best exemplified by the recent judgment on pecuniary penalties handed down by the Competition Tribunal. (Click [HERE](#) for details)

Advice to businesses receiving the subsidy

To ensure open and effective competition in the procurement of products and services, all businesses are reminded to stay vigilant during the procurement process and strengthen defence against potential anti-competitive conduct. When tendering is involved, procurement officers are encouraged to adopt Non-collusive Clauses and Certificate in their tender documents and contracts with suppliers to safeguard the procurement process. Businesses are welcome to refer to the model clauses and certificate available on the Commission's [website](#).

The Commission has also produced a series of educational materials including practical toolkits, easy-to-understand brochures and videos to help businesses, in particular SMEs, understand the key elements of the Ordinance and look out for signs of different anti-competitive conduct. All these materials are available on the Commission's [website](#).

Advice to public bodies

The Commission also calls for public bodies which are tasked to administrate subsidy programmes under the Anti-epidemic Fund to take competition concerns into consideration. The Commission welcomes any enquiries from these bodies and stands ready to offer advice from competition law and policy perspectives. In this regard, the Commission is pleased to learn that the Hong Kong Productivity Council has accepted the Commission's advice on collusion prevention and factored in competition consideration by incorporating the Commission's Model Non-collusive Clauses and Certificate in the Guidance Notes for the Distance Business Programme under the Anti-epidemic Fund.

Mr Samuel Chan, Chairman of the Commission, said, "It is important for all stakeholders in the market to safeguard competition which is the cornerstone of a free and dynamic economy leading to better prices, products and choices for everyone. The Ordinance remains in full effect during the epidemic and the Commission will be vigilant about the possibility of Government fund and subsidy schemes being taken advantage by business undertakings or individuals engaged in cartel conduct."

"As a matter of fact, all of the six cases filed by the Commission so far involved bid-rigging, price fixing, market sharing or the exchange of sensitive information in different sectors, of which the first two cases have already been ruled by the Competition Tribunal in favour of the Commission. We will continue to actively pursue conduct that undermine competition with the full force of the law."

All parties are encouraged to report suspected anti-competitive practices to the Commission at 3462 2118.
