

05 February 2008

Antitrust & Competition

***Hong Kong: The Competition Policy Advisory Group's 06/07 Annual Report - Key Reviews And Key Take-outs***

**Summary**

The Competition Policy Advisory Group has released its 06/07 Annual report, which includes an outline of complaints that it has reviewed relating to alleged anti-competitive practices in Hong Kong. Notably, the businesses that were the subject of these complaints include supermarkets, airlines, banks and raw materials suppliers - who are all members of industries that some commentators have identified as likely to come under scrutiny when a general Hong Kong competition law is introduced.

**Full Update**

On 31 December 2007, the Hong Kong government's Competition Policy Advisory Group ("**COMPAG**") released its annual report for the financial year 1 April 2006 to 31 March 2007. The report includes an outline of alleged anti-competitive practices that COMPAG reviewed during the year.

COMPAG is tasked with reviewing such allegations and, where appropriate, determining whether the Hong Kong government's competition policy has been breached (although COMPAG commonly passes the complaints on to specialist industry bodies for the requisite investigation). Although COMPAG has no power to sanction businesses found to have acted contrary to the policy, it can publish adverse findings.

Interestingly, a number of the complaints reviewed by COMPAG during 06/07 concern industries that are regularly cited as likely targets for review when a general Hong Kong competition law is introduced. The relevant complaints, and their outcomes (where applicable), are summarised below.

***Supermarkets***

The supermarket sector is commonly referenced in commentary regarding the need for a competition law in Hong Kong, as it is dominated by two incumbents (Park'n'Shop and Wellcome) who have been accused of unfairly wielding their market power to stifle price competition and hinder the entry of new market participants. Supermarkets were the focus of two of the recent complaints reported by COMPAG.

One complaint concerned allegations that a supermarket unilaterally raised the retail price of a supplier's products above an agreed level, and, after displaying the supplier's products for only a few months, ceased stocking the products upon the launch of similar products under the supermarket's own brand name. The complaint remains under investigation by the Consumer Council, and raises issues of whether market power was abused.

COMPAG also reported allegations made by representatives of the rice industry in Hong Kong concerning 'predatory pricing' behavior by supermarkets. Predatory pricing involves the temporary lowering of prices by a business with the aim of preventing competitors from being able to effectively establish or sustain a position in the market. Although consumers may benefit from the lower prices in the short term, their interests may be damaged in the long run if monopoly power results.

COMPAG referred the complaint to the then Commerce, Industry and Technology Bureau and the Trade and Industry Department, who determined that the allegations could not be substantiated.

## ***Airlines***

COMPAG reported allegations that certain airlines had engaged in predatory pricing by offering air tickets through their own websites at lower prices than they offered to their designated travel agents, and by introducing 'air ticket & hotel' packages with a view to providing greater discounts to customers.

The complaint was reviewed by the Economic Development and Labour Bureau (EDLB), who determined that the complainant had not provided sufficient evidence to prove that the relevant conduct amounted to predatory pricing.

The decision reflects the fact that the mere act of undercutting competition or existing distribution arms will not of itself generally be sufficient to sustain an allegation of predatory pricing conduct. As noted above, it is generally required that there be evidence that the relevant pricing conduct was part of a deliberate strategy to harm competitors.

## ***Banks***

The banking sector was the subject of one reported complaint. Specifically, it was alleged by the Hong Kong Association of Online Brokers (HKAOB) that some banks were discriminating against brokers by:

- (a) refusing to quote interest rates to brokers on the first day of an IPO;
- (b) quoting rates that are higher than those offered to the banks' own retail clients; and
- (c) refusing to provide IPO financing to brokers.

The HKAOB considered such conduct to be anti-competitive because it diverted retail clients away from stockbrokers, and distorted the market by driving up interest rates.

The complaint was directed to the Securities and Futures Commission, who (after consultation with the Hong Kong Monetary Authority) concluded that the relevant banking practices did not raise any concerns in the context of the government's competition policy. Accordingly, COMPAG decided that the complaint was unsubstantiated.

## ***Bitumen***

COMPAG also reported on a complaint relating to alleged collusion and tender-rigging relating to the supply of bituminous materials.

Specifically, it was reported that an anonymous complainant alleged two suppliers refused to supply bids (or genuine bids) for government road-maintenance projects after two other suppliers had agreed on a fixed price with other bidders.

The complaint remains under investigation.

Markets for the supply of raw materials of this nature are commonly the subject of review by competition investigators around the world, as their capital-intensive nature and the difficulty of transporting the materials long distances often leads to localised markets that are dominated by a small number of participants.

Indeed, the market for the supply of asphalt (for which bitumen is one of the major raw materials), was the subject of a review by the Environment, Transport and Works Bureau in 2003 after allegations of anti-competitive cartel practices were raised. However, the bureau did not find any evidence of anti-competitive practices in the asphalt supply market.

## ***Key Points To Note***

The Consumer Council has cited the various complaints referenced in the latest COMPAG annual report as indicating an "increasing awareness" of competition issues in Hong Kong. However, the lack of substantiated complaints may also indicate how difficult it can be to prove allegations of anti-competitive practices in the

absence of a competition regulator that has strong investigatory and enforcement powers.

The Hong Kong government has indicated that it will seek to address this issue when a new general competition law is introduced. In this context, all businesses in Hong Kong (and especially those in industries that are commonly cited as raising competition concerns) need to ensure they will be in a position to demonstrate compliance with such a law when it is introduced.

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