



Hong Kong Competition Law

INVESTIGATION SERIES: PART 2

Complaints

Complaints are one of a number of important channels by which the Competition Commission receives information about potential anti-competitive behaviour.



Who Can Make Complaints?

A complaint may be made by any person who suspects that a business *has contravened, is contravening, or is about to contravene* a competition rule.

A person may make a complaint directly, anonymously or through an intermediary, such as a legal advisor.

What Information is Required for a Complaint to be Made?

There are no fixed criteria for the details that must be provided to substantiate a claim, but

complainants are encouraged to provide as much information as possible. The Commission will likely ask for the following information, depending on the circumstances:

1. A description of the relevant facts regarding the conduct complained of.
2. Information on documents that relate to the complaint including copies of the documents where possible.
3. Information about the party or parties affected.
4. Information about the impact of the conduct on the complainant, and the complainant's contact details.

In addition to the above, the Commission may make specific requests for other types of information.

Will the Identity of the Complainant be Kept Confidential?

Generally, to avoid impeding the Commission's investigation, the complainant will be requested to keep the complaint confidential. Likewise, the Commission will keep the complaint and the identity of the complainant confidential.

There are, however, exceptions where the Commission may disclose the complainant's identity without their consent, for example, where the Commission is compelled to do so by a court order, or otherwise where the Commission considers disclosure necessary in the performance of its functions under the law. Disclosure may be made to a third party by extending the obligations of confidentiality to recipient.

Will the Commission Investigate Every Complaint it Receives?

While the Commission will receive and consider any and all complaints, it enjoys full discretion on whether or not a complaint will be pursued, having regard to whether it is a reasonable and substantiated complaint, and its enforcement priorities.

Upon receipt of a complaint, the Commission will conduct a preliminary review and resolve to take no further action, refer the complaint to another agency, or conduct an initial assessment of the complaint. If the Commission resolves to take no action, or to make a referral, it will provide an explanation of its decision to the complainant; if an initial assessment is commenced, the Commission may inform the complainant of the progress of the case.

Practical Considerations

Complaints are a risk area to many businesses, as they are a cheap and easy way to cast conduct under the scrutiny of a regulator. Businesses should be wary of grievances by disgruntled competitors, customers or even ex-employees, and properly manage the risk of complaints.

Having in place a robust internal complaints-handling mechanism and compliance programme will reduce the risk of complaints arising and being brought to the Commission. Whereas vexatious and frivolous complaints cannot be prevented, businesses may be assured that the Commission is unlikely to investigate baseless complaints.

Aside from defending against potential and actual complaints, businesses should also bear in mind that making a complaint is a powerful way to protect your own business interests and bring a misbehaving competitor or business partner in line. Failure to report anti-competitive behaviour may create the perception that you condone that behaviour or arouse suspicion that you were somehow involved.

If you require assistance to deal with a complaint or would like to bring a complaint to the Commission, please contact:



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