

# Hong Kong Competition Law

## INVESTIGATION SERIES: PART 3

### Investigations Overview



#### How does the Investigative Process Begin?

The investigative process begins by the Hong Kong Competition Commission (the “Commission”) identifying a potential contravention of a competition rule. The Commission’s sources of information may include:

- A complaint or query made by the public<sup>1</sup>
- The Commission’s request or intelligence gathering
- Other Commission processes (such as applications for decisions or exemptions) and investigations<sup>2</sup>
- Referrals by the government, courts or other statutory bodies or authorities
- Leniency applications

#### Two-stage Investigative Process

Upon receipt of information concerning potential anti-competitive conduct, the Commission may commence the investigative process, which is divided into two stages.

##### STAGE 1: INITIAL ASSESSMENT

At this stage, the Commission conducts an initial assessment of whether there is reasonable cause to



suspect that a contravention of the competition rules has occurred, and makes a determination as to whether further investigation is appropriate.

The Commission may seek information on a voluntary basis, but does not have power to compel persons or businesses to provide information to it.

##### STAGE 2: FORMAL INVESTIGATION

If the Commission proceeds to a formal investigation, its objective at this stage would be to gather evidence to confirm whether or not a contravention of the competition rules has occurred.

<sup>1</sup> See our legal update on the [Complaints process](#).

<sup>2</sup> The Commission claims it has the right to use evidence gathered in one investigation in another investigation.

In doing so, the Commission will have at its disposal its full arsenal of investigative tools under the Competition Ordinance.

Subject to legal privilege, you are required to cooperate with the Commission in relation to matters relevant to its investigation. Failure to cooperate in any manner including providing false or misleading information, destroying or concealing evidence or obstructing a search by the Commission constitutes a criminal offence punishable by fines and/or imprisonment.

The Commission may also apply to the Competition Tribunal (the “Tribunal”) for an interim order if it is satisfied a person is engaged in, or proposing to engage in, a contravention of the competition rules, which may include injunction-type orders.

At the end of an investigation, the Commission may adopt any of the following:

1. Take no further action<sup>3</sup>.
2. Accept a commitment from the business(es) under investigation to take any action or refrain from taking any action to address the Commission’s concerns.
3. Issue a Warning Notice (for non-serious violations of the First Conduct Rule), where the Commission maintains there is reasonable

cause to believe there has been a contravention of the Ordinance<sup>4</sup>.

4. Issue an Infringement Notice or commence proceedings in the Tribunal (for serious anti-competitive conduct or conduct under the Second Conduct Rule)<sup>5</sup>.

## COMMITMENTS

At any stage of the investigative process, business(es) under investigation may offer to enter into commitments with the Commission aimed at addressing the Commission’s concerns. If the Commission accepts a commitment<sup>6</sup>, it may agree to terminate its investigation or not to bring proceedings in the Tribunal.

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<sup>3</sup> Note that a decision to take no further action does not prevent the Commission from revisiting the matter at a later date.

<sup>4</sup> The Commission must issue a Warning Notice for violations of the First Conduct Rule that do not amount to serious anti-competitive conduct. The Warning Notice will provide an opportunity for the business(es) under investigation to rectify the identified conduct, after which the Commission may commence proceedings in the Tribunal without further notice.

<sup>5</sup> The Commission may either issue an Infringement Notice or directly commence proceedings in the Tribunal against serious anti-competitive conduct or violations of the Second Conduct Rule. If issued, an Infringement Notice will contain proposed commitments, which, if accepted, will allow the business(es) under investigation to avoid prosecution. Failing this, the Commission may commence proceedings in the Tribunal.

<sup>6</sup> Commitments accepted by the Commission are not confidential and are made publically available on the Commission’s website under its ‘Commitments Register’.

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