

Review of Competition Policy 競爭政策檢討

August 2006
二零零六年八月

Purpose of Review

檢討目的

- To ensure that Hong Kong's competition policy continues to serve public interest and provide a business-friendly environment
確保競爭政策符合公眾利益，提供有利營商的環境
- To protect market order and fair competition by preventing manipulative market practices such as price fixing, bid rigging and market sharing
維護市場秩序和公平競爭，防止出現如合謀定價、串通投標、分割市場等操控行為
- To consider the most appropriate arrangement for giving effect to the policy
為政策構思一個最適當的實施方案

Conduct of Review

檢討方式

- Review of competition law and regulatory framework in other jurisdictions
參考外國的競爭法例及規管架構
- Review of sector specific competition laws and regulatory frameworks in Hong Kong
檢討香港特定行業的競爭法例及規管架構
- Review of submissions from interested parties
參考關注團體提出的意見
- Review complaints and studies handled by COMPAG
參考競爭政策諮詢委員會過去處理的投訴和進行的研究

Policy Framework

政策綱領

- Objective is to enhance economic efficiency and free flow of trade, thereby also bringing benefit to consumers
政策目標是提高經濟效率和促進貿易，從而惠及消費者
- To reinforce business confidence, enhance pro-enterprise, pro-market environment and provide a level playing field for all
加強營商信心、改善營商環境以促進企業和市場發展，以及為各行業提供公平的競爭環境
- Do *not* aim to target or to benefit specific sectors, nor stimulate or introduce competition artificially
政策宗旨並非針對或特別照顧個別行業，或人為地刺激或引進競爭
- Do *not* seek to change market structure
政策並不針對市場結構

Recommendations (1)

建議 (1)

I. Legislative Approach 立法規管

- Legislative backing is required to enable substantive action against anti-competitive behaviour
須制訂具法律效力的機制，有效打擊反競爭行爲
- The law should be cross-sector in nature, rather than singling out certain sectors of the economy
法例應適用於各行各業，而非針對某些行業或界別
- Appropriate investigative powers and statutory sanctions are necessary for effective enforcement
須賦予當局適當的調查權力、訂明法定處分，使法例得以有效執行
- Exemptions should be provided for where merited on economic or public policy grounds
應訂定豁免條文，容許基於經濟或公共政策理由給予豁免

Recommendations (2)

建議 (2)

II. Scope of Competition Law

競爭法例的適用範圍

- Focus on specific types of anti-competitive conduct, with reference to existing COMPAG guidelines
參照競爭政策諮詢委員會現有指引，集中處理特定的反競爭行為
- Conduct includes: price-fixing, bid-rigging market allocation, sales and production quotas, joint boycott, unfair and discriminatory standards and abuse of a dominant market position
有關行為包括：操縱價格、串通投標、分配市場、設立銷售及生產限額、聯合抵制、不公平或歧視性的準則及濫用市場支配地位
- Broad definitions in the law should be supplemented by detailed regulatory guidelines
訂定詳細的規管指引，補充法例中的概括定義

Recommendations (3)

建議 (3)

III. Institutional Framework

規管架構

- Competition Commission (comprised an executive office supervised by a governing board) to investigate possible offences and bring charges
由競爭事務委員會(包括一個管理局及旗下的行政辦事處)調查涉嫌違法行為及提出起訴
- Consideration to setting up a Competition Tribunal to adjudicate on cases and hand down sanctions
應考慮成立競爭事務審裁處審理個案和判以懲處
- Civil penalties
民事懲處
- Appeals and civil action through the courts
交法庭審理上訴和民事訴訟

Recommendations (4)

建議 (4)

IV. Other Provisions

其他條文

- Exemptions from the application of the law where merited on economic or public policy grounds
為有充分經濟或公共政策理據的個案提供豁免
- Commission to have discretion not to act on inappropriate complaints
競爭事務委員會有權不受理不合情理的投訴
- Issue of “cease and desist” orders to prevent suspected anti-competitive conduct continuing
可發出「停止及制止令」以防止懷疑反競爭行為繼續發生
- Administrative settlement in lieu of formal proceedings
可進行和解以代替正式訴訟