

A NEW ERA OF ENFORCEMENT: THE 9TH YEAR OF HONG KONG ANTITRUST

2024 was undoubtedly a busy enforcement year for the Hong Kong Competition Commission (**Commission**). Over the last year, the Commission has focused its investigation efforts on hardcore cartel conduct - conducting several raids with other local law enforcement agencies to combat suspected cases of price fixing, market sharing and bid-rigging. The Competition Tribunal (**Tribunal**) also had a particularly active year, with an unprecedented number of competition trials, each involving several weeks of argument and evidence. In this briefing, we take a look at the highlights from the Commission and Tribunal's activities in 2024.

Dawn raids on the uptick

Continuing its efforts from 2023, the Commission significantly increased the number of dawn raids it conducted this year. These operations have also grown in scale, often executed simultaneously at multiple locations, lasting over a day. Notably, all the Commission's publicised raids in 2024 were conducted in collaboration with other agencies or with their assistance. These included:

1. Raids conducted for suspected price fixing of funeral services

In January 2024, the Commission began the year by executing search warrants at 13 locations associated with various funeral service companies and a trade association. The raids were a follow-up to a 'surprise visit' conducted by the Commission at the New Territories (Shatin) Forensic Medicine Centre in August 2023 where officials attended the centre to gather information and further intelligence.

The operation took place across Hong Kong as part of an investigation into allegations of anti-competitive practices, including price fixing and market sharing among funeral service providers. During the raids, the Commission reportedly seized mobile phones from relevant individuals, and issued compulsory requests for documents and information to further the investigation. The operation was assisted by the Hong Kong Police Force (**Police Force**).

The Commission follows in the footsteps of a number of regulators around the world which have scrutinised the funeral services industry. The UK's Competition and Markets Authority (**CMA**) expressed serious concerns regarding the funeral sector in a market study published in 2021. The industry has also drawn criticisms from the French Consumer and Competition Authority, the Federal Trade Commission in the United States and multiple provincial authorities in China for its unfair pricing practices.

2. Raids at residential premises of individuals in the building maintenance sector

In April 2024, the Commission conducted its first joint operation with the Independent Commission Against Corruption (**ICAC**) in connection with a suspected case of tender-rigging for building maintenance works, raiding a total of 40 premises over a two-day period. Four months later, after analysing the evidence collected during this operation, the Commission and the ICAC took further enforcement action, executing search warrants against an additional 20 premises.

Both operations were significant as they involved the Commission and the ICAC executing searches at both offices and the homes of individuals connected with the investigations. The joint operation in April represented the Commission's first public execution of a search warrant at a residential property. Following that operation, three of the four raids conducted by the Commission this year have included searches at the residences of individuals suspected to be involved in the investigation.

As working from home becomes increasingly standard in the post-COVID era, the Commission is expected to maintain this approach. With enhanced work flexibility, we can expect the Commission to continue its practice of not only seizing documents and computers, but also the mobile phones of relevant individuals.

3. Raids over cartel conduct referred by the Hong Kong Productivity Council

Shortly after the Tribunal handed down its judgment in the *Multisoft* case on 30 July (see below), the Commission built on its success and cooperation with the Hong Kong Productivity Council (HKPC) in another **investigation**, executing search warrants at a registered address of an IT service provider and the homes of five individuals. In addition to conducting searches, the Commission also exercised its compulsory powers to request documents to be produced, and for relevant individuals to provide information before the Commission.

The investigation was referred to the Commission by the HKPC. Similar to the *Multisoft* case, the Commission's investigation was centred on suspected bid-rigging, price fixing and market sharing practices by certain companies providing quotations under the Government's Pilot Subsidy Scheme for Third-Party Logistics Service Providers.

Under the stewardship of the Commission's Executive Director of Operations, Patrick Kwok (who was a former member of the Police Force and Regional Commander of Hong Kong Island), we expect the Commission will continue working closely with the Police Force and other agencies, such as the ICAC and HKPC, to enhance investigation efficiencies and strengthen competition enforcement.

Competition litigation picks up pace

Compared to prior years, 2024 was certainly a busy year at the Tribunal.

Although the Commission did not file any new cases this year, the Tribunal heard multiple trials and issued several judgments. This will significantly contribute to the expanding body of competition case law in Hong Kong. These include:

4. The Tribunal orders penalties in the *Multisoft* case

In June 2024, the Tribunal granted orders pursuant to joint applications filed by the Commission and the settling parties under the Tribunal's settlement procedure (known as *Kam Kwong* proceedings). In July, the Commission further granted the reliefs sought by the Commission against the remaining parties in the proceedings.

The *Multisoft* case is significant for a number of reasons:

- It is a useful illustration of the various ways to expedite the resolution of enforcement cases (see our **August 2024 briefing**). This is the fourth case that has been settled under *Kam Kwong* proceedings;
- This is the first time that the Tribunal has granted relief under Rule 76 of the Competition Tribunal Rules. The rule is similar to orders for a default judgment in general civil proceedings, allowing the Tribunal to grant relief against respondents who fail to file response in the proceedings;
- It highlights the advantages (i.e. penalty discounts) of settling early with the Commission; and
- It reiterates that, in addition to pecuniary penalties, the Tribunal may also order the payment of the Commission's investigation and litigation costs which may be substantial.

5. The Tribunal hears three cases brought by the Commission

In 2024, the Tribunal heard a record three cases brought by the Commission. All three cases, summarised below, will have a significant impact in shaping the landscape of competition law enforcement in Hong Kong.

- a. ***Textbooks Cartel*** case (CTEA 2/2020). In April, the Tribunal heard the Commission's case against TH Lee Book Company Limited, Commercial Press (Hong Kong) Limited and Sino United Publishing (Holdings) Limited and two individuals. The book retailers are alleged to have been involved in price fixing, market sharing and/or bid-rigging in relation to the sale of textbooks to students attending primary and second schools in Hong Kong (See our **April 2020 briefing**). The Tribunal's ruling is likely to shed light on (among other issues) whether a parent company may be exposed to antitrust liability caused by its subsidiary's anti-competitive conduct even if it has no knowledge of the impugned conduct. The outcome will be especially important for conglomerates and investment firms to assess the potential risk arising from the acts of its subsidiaries from a competition perspective.
- b. ***Medical Gases*** case (CTEA 3/2020). In August, the Tribunal began a 21-day trial on Hong Kong's first case on the abuse of substantial market power in contravention of the Second Conduct Rule. The Commission alleges that Linde HKO Limited (**Linde**) leveraged its de facto monopoly position in the medical gases supply market into the downstream medical gas pipeline systems maintenance market, and engaged in various exclusionary acts against its competitors, such as refusing to supply medical gases and imposing arbitrary and/or unreasonable terms. The Commission sought pecuniary penalties against Linde and its parent company, and a director disqualification order against Linde's general manager. Notably, the Commission sought the maximum five-year disqualification order, which, if imposed, would be the longest

disqualification ever imposed by the Tribunal. The Tribunal's judgment will be crucial in determining whether the criminal standard of proof (i.e. beyond all reasonable doubt) could impact the Commission's ability to demonstrate breaches of the Second Conduct Rule.

- c. **Monosodium glutamate (MSG)** case (CTEA 3/2022). In November 2024, the Tribunal began a 20-day trial against The Tien Chu (Hong Kong) Company Limited (**Tien Chu**), a local condiment producer. In this case, the Commission alleges that Tien Chu engaged in resale price maintenance (**RPM**), by imposing a minimum resale price to be charged by its two main local distributors when reselling its MSG powder product. The case marks the first instance that RPM is being addressed in the Tribunal, with the Commission asserting that such practices have the object of harming competition in contravention of the First Conduct Rule. The case will set a significant precedent for Hong Kong competition law on vertical agreements. In its latest **Annual Report**, the Commission noted that it was investigating at least two other cases relating to RPM.

As of the end of 2024, the Commission has filed a total of 15 cases with the Competition Tribunal (same as 2023). Seven of these cases have now been resolved, resulting in a variety of sanctions, including but not limited to fines, injunction, order to adopt compliance measures, and director disqualification orders. The remaining eight cases (including the three mentioned above) are still pending.

6. First criminal prosecution relating to non-compliance with the Commission's investigative powers

This year saw the first criminal prosecution for failing to comply with the Commission's investigation powers. The prosecution related to a raid the Commission conducted in 2021 against various cleaning service companies for suspected cartel activity.

During the course of the operation, it was alleged that an employee of one of the investigated companies, Hong Kong Cleaning Services Limited (**HKC**), attempted to erase documents relevant to the Commission's investigation. The case was referred to the Police Force for a criminal investigation. The individual was charged with one count of disposal and concealment of documents in contravention of section 53(1)(a) of the Competition Ordinance. If convicted, the individual could be liable to a fine of up to HK\$1,000,000 and to imprisonment for up to 2 years on conviction. The trial is scheduled to be heard in the Magistrates' Court in early 2025.

As for the substantive case, in January and December 2024, Man Shu Hong Kong & Kln Cleaning Company Limited (**MS**) and HKC respectively admitted to exchanging commercially sensitive information and price fixing, in contravention of the First Conduct Rule, while bidding for 17 contracts of the Hong Kong Housing Authority (**HKHA**) to provide cleaning services for various buildings under the HKHA's management. Three directors of HKC and MS also admitted liability for their involvement and the Commission sought director disqualification orders against all three directors. The Commission and HKC have jointly recommended that HKC pay a penalty of HK\$10.96 million, which is currently pending the Tribunal's approval. MS has yet to reach a settlement with the Commission on the recommended pecuniary penalties.

Challenges ahead?

7. First judicial review against the Commission's granting of leniency marker

2024 was not without challenges for the Commission. In March, Midland Realty International Limited (**Midland**), a real estate agency, began judicial review proceedings against a decision made by the Commission to deny its request for a leniency marker in the Real Estate Agents Cartel case (see our **November 2023 briefing**). Midland alleged that the Commission departed from its Leniency Policy when it told Midland on 13 March 2024 that a leniency marker was not available, despite Midland being allegedly the first party to approach the Commission for a leniency marker. Documents disclosed during the substantive proceedings revealed that the Commission had granted leniency to Centaline Property Agency Limited and Ricacorp Properties Limited but only after Midland had already approached the Commission for a leniency marker. Midland says that this deprived them of a fair opportunity to demonstrate what assistance they could have provided the Commission, which could have given them immunity from the proceedings subsequently initiated by the Commission.

In addition to being the first time a Commission decision has been subject to judicial challenge, the Court's decision will have a profound impact on the Commission's leniency programme and its appeal to potential applicants in future investigations. The case was heard by Coleman J in August 2024, with judgment pending. The substantive trial against Midland was postponed to August 2025, pending the outcome of the judicial review challenge.

What's to come in 2025

As the Competition Ordinance enters its 10th anniversary, we expect the Commission to intensify its enforcement activities, with a particular focus on the information technology sector where the Commission currently has the greatest number of ongoing cases either under initial assessment or investigation.

As the Commission deepens its collaboration with other local law enforcement agencies, we could potentially see the Commission going after bigger syndicates and investigating more complex and sophisticated cartels. On the policy front, we may also see the Commission strengthening its collaborations with Mainland authorities, facilitating a more cohesive approach to competition policy, particularly in the Greater Bay Area.

2025 will likely see the Tribunal handing down decisions from the cases it heard this year, establishing important precedents and providing greater clarity for the Hong Kong business community. The Tribunal is also expected to hear more trials in 2025 - it is already set to hear the highly-anticipated case against several hotel groups and a tour counter operator for facilitating an alleged price fixing cartel (see our [February 2021 newsletter](#)) in February 2025.

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