

August 17 Legal and Regulatory Update

Top stories

Competition Commission's second case

Following its first case in March (against IT companies for “bid-rigging”), the Competition Commission initiated its second case in the Competition Tribunal — this time against 10 **construction and engineering companies** for “**market sharing**” and “**price fixing**” regarding renovation services at a public rental housing estate in Kwun Tong. (i.e. contravention of **First Conduct Rule**). (Click: [press release](#))

What you should know:

- “**First Conduct Rule**” means — parties acting together with an **agreement**, and/or engaged in a **concerted practice**, whose **object or effect** is “to prevent, restrict or distort” competition in Hong Kong
- As addressed in our previous updates, “**cartel actions**” i.e. **price fixing, market sharing, and bid-rigging**, is a priority enforcement area for the First Conduct Rule
- Alleged “**market sharing**”: “allocation” among the contractors of specific floors of the project (i.e. would not actively seek or accept business from tenants of certain floors; would instead re-direct them to relevant contractors)
- Alleged “**price fixing**”: joint production and use of promotional flyers containing “package prices”; indicative of “**standard pricing**”

What you should do:

- All companies must steer clear of cartel practices
- Those already involved in such practices should consider approaching the Commission for leniency
- The Commission also encourages the public to report suspected cartel practices

Also in this issue

The Competition Commission also published its first block exemption order (“BEO”) for vessel sharing agreements (VSAs) for the shipping liner industry, but not for voluntary discussion agreements (VDAs), which were both sought to be exempted. A BEO excludes the application of the First Conduct Rule. (Click: [press release](#); [BEO](#); [Statement of Reasons](#))

(Background: the Commission published a proposed BEO in Sept 16, followed by public consultation and further submission by the applicant; Click our [Sept 16 update](#))

VSAs (which include consortia, slot exchange agreements, joint service agreements and alliances) are agreements between shipping lines on certain operational arrangements.

VDAs are agreements pursuant to which shipping lines discuss certain commercial matters relating to particular shipping routes.

What you should know/do:

- The first BEO — the Commission considers that VSAs generate sufficient **economic efficiencies** under the **First Conduct Rule**
- The proposed BEO is **broadly in line with the EU approach**, where exemption has been granted to VSAs but not VDAs. However, it appears to be more restrictive than the position in Singapore, where both VSAs and VDAs are permitted
- **General competition law implications** — should note the Commission’s approach and **high evidential standard**
- The applicant tried to justify VDAs for **“broad efficiencies”** (e.g. to the Hong Kong economy, by promoting a “super connector maritime shipping centre and Hong Kong’s role in the One Belt One Road initiative”)
- The Commission did not decide on whether “broad efficiencies” is acceptable as a principle, but determined that the required **“causal link”** between such information sharing and the claimed efficiencies had not been established anyway

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