

Communications Association of Hong Kong (“CAHK”)

Code of Conduct on Competition Law (“Code of Conduct”)

Introduction

This Code of Conduct sets out the rules to which CAHK and all members of CAHK will follow when members deal with each other and with CAHK to avoid contravention of the Competition Ordinance (Chapter 619 of the Laws of Hong Kong) (“Competition Ordinance”).

CAHK and members are subject to the Competition Ordinance. Contravention of the Competition Ordinance can have serious consequences for CAHK and the members. Therefore it is important that each and every member of CAHK and management of CAHK understand the prohibition under the Competition Ordinance and adhere to this Code of Conduct to ensure that they do not contravene the Competition Ordinance in their business dealings.

Conducts Prohibited under the Competition Ordinance

The Competition Ordinance prohibits 3 types of anti-competitive conducts:

- Anti-competitive agreements between undertakings (“First Conduct Rule”)
- Abuse of substantial market power (“Second Conduct Rule”)
- Anti-competitive mergers involving telecommunication carrier licensees (“Merger Rule”)

The term “undertaking” is defined to refer to any entity, regardless of their legal status or financial structure that engages in economic activity. The term also includes natural persons or associations that are engaged in economic activity.

First Conduct Rule

The First Conduct Rule prohibits anti-competitive agreements, concerted practices and decisions of undertakings. Section 6(1) of the Competition Ordinance provides that,

“(1) An undertaking must not:

- (a) make or give effect to an agreement;*
- (b) engage in a concerted practice; or*
- (c) as a member of an association of undertakings, make or give effect to a decision of the association,*

if the object or effect of the agreement, concerted practice or decision is to prevent, restrict or distort competition in Hong Kong.”

The Competition Commission considers decision of the association to include the constitution of the association, rules of the association, resolutions, rights, decisions, guidelines or recommendations of the association, whether made by the board, members, a committee or an employee of the association.

The Competition Ordinance also defines Serious Anti-competitive Conduct as any conduct that consists of one or more of the following:

- Price fixing – fixing, maintaining, increasing or controlling the price for the supply of goods or services
- Output restriction – fixing, maintaining, controlling, preventing, limiting or eliminating the production or supply of goods or services
- Market sharing – allocating sales, territories, customers or markets for the production or supply of goods or services
- Bid rigging – agreements among bidders in order to “rig” the bidding process for a tender

For any anti-competitive conduct that is found to be Serious Anti-competitive Conduct, the Competition Commission may commence proceeding before the Competition Tribunal without issuing a Warning Notice. Further the general exclusion under the Competition Ordinance for agreements of lesser significance will not apply.

Second Conduct Rule

The Second Conduct Rule prohibits an undertaking with substantial market power from abusing its market power. Section 21(1) of the Competition Ordinance provides that,

“21(1) An undertaking that has a substantial degree of market power in a market must not abuse that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong.”

This rule concerns a unilateral conduct of an undertaking. Abusive conduct includes predatory pricing, refusal to deal, limiting production.

Merger Rule

The Merger Rule prohibits mergers that have or are likely to have the effect of substantially lessening competition in Hong Kong. The Merger Rule will be limited to undertakings holding carrier licences issued under the Telecommunications Ordinance (Cap 106).

Exclusions and exemptions

The Competition Ordinance provides certain exclusions and exemptions:

- If the agreements ‘*enhance overall economic efficiency*’, e.g. if they can improve production or distribution. However, the agreements must not impose unnecessary restrictions or give the undertakings the power to eliminate competition in a large area of the market.
- If the agreements are made to comply with a legal requirement, or made for a task required by the Government.

- The First Conduct Rule does not apply to an agreement between undertakings which do not involve serious anti-competitive conduct if their combined turnover for the relevant turnover period does not exceed HK\$200 million.
- The Second Conduct Rule does not apply to undertakings whose turnover does not exceed HK\$40 million for the relevant turnover period.
- If there is a merger.

Members should acquaint themselves with the prohibitions under the Competition Ordinance. For details of prohibited anti-competitive conducts members should consult their lawyers or refer to the guidelines and publications issued by the Competition Commission which are accessible on its website.

Compliance by Members of CAHK and CAHK

To the extent that members of CAHK are competitors, they must comply with the Competition Ordinance in their dealing with each other and with CAHK. Specifically members must not engage in any anti-competitive conducts including exchange of sensitive commercial information.

Members must comply with this Code of Conduct in their dealing with each other and with CAHK including their communication with each other and with CAHK and when attending meetings of CAHK or gatherings organized by CAHK.

The following Dos and Don'ts must be adhered to by CAHK and its members to comply with the Competition Ordinance (they are by no means exhaustive):

Dos	Don'ts
Promote industry interests to government and customers	Recommend or set price or fees
Establish competition compliance policy for association	Restrict sale of products
Be careful when collecting information from members	Divide up sales territories or type of customers or products
Ensure membership is based on clear, objective and qualitative criteria	Recommend production targets
Ensure certification scheme is based on objective and reasonable quality requirements and available to all	Coordinate or facilitate collusive tendering
Ensure industry standards setting process is open and do not affect price to customers	Share competitively sensitive information
	Organise or encourage boycott

	Set rules that restrict competition among members
	Prevent members from developing alternative standards or products that do not comply with association's standard
	Set arbitrary rules that admit and/or expel members

Information Exchange

To the extent that members of CAHK are competitors, they must not exchange their commercial information with each other, such information includes pricing or market strategy or customers. Such conduct may be considered as Serious Anti-competitive conduct. Exchange of commercial information allows the receiving parties to derive their business strategy accordingly and thereby reducing competition between the disclosing and receiving parties.

The following table gives a guideline on what information exchange may infringe the Competition Ordinance and what information exchange will be unlikely to infringe:

Likely to infringe	Unlikely to infringe
Exchanging commercially sensitive or confidential information concerning: <ul style="list-style-type: none"> • Business development • Business strategy • Competitive position and strategy • Current confidential information • Specific information relating to customers / transaction • Pricing including discounts, rebates, payment terms, price levels, pricing trends, costs, 	Exchanging information concerning: <ul style="list-style-type: none"> • Public domain information • Historical information and which is unlikely to indicate current or future strategy • General, aggregated or anonymised information • Industry practices, trends or general market development and no company specific information is disclosed

Industry statistics and benchmarking

From time to time, CAHK may collect data from members for purposes of compiling industry statistics for analysis or benchmarking, often at the request of regulatory bodies. The following rules must be observed when disclosing data for compiling industry statistics or benchmarking:

- Members submitting their data must not disclose their individual data to other members
- Members should be submitting their data to a staff of CAHK or a neutral third party or consultant engaged for the study
- Data should be disseminated in an aggregated format which does not identify individual member
- Published reports should rank participating members anonymously
- Members may be informed confidentially their individual actual performance in any benchmarking studies
- CAHK will keep individual company data strictly confidential
- Members should not discuss matters relating to individual company data before, after or at a meeting or any other meeting of CAHK

Meetings

Members and CAHK will observe the following rules in conducting their meetings in connection with the activities of CAHK:

Before meeting	<ul style="list-style-type: none"> • Review previous meeting notes to ensure that no commercially sensitive or confidential information of members is disclosed • Review agenda to ensure that no commercially sensitive or confidential information between members will be discussed
During meeting	<ul style="list-style-type: none"> • Adhere to agenda items • Do not disclose or discuss confidential or sensitive information of members • Take minutes of meeting including list of attendees • Stop meeting if any competition-sensitive information comes up and make sure minutes records that • Members should be given the opportunity to consult their lawyer if any competition-sensitive topic were raised • Any disagreement should be properly recorded including departure from the meeting
After meeting	<ul style="list-style-type: none"> • Make sure minutes do not contain any commercially sensitive information

Review

This Code of Conduct will be reviewed and updated as required from time to time. The most up to date version will be posted on CAHK website.

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