



競爭事務委員會  
COMPETITION  
COMMISSION



通訊事務管理局  
COMMUNICATIONS  
AUTHORITY

# Draft Guideline on Complaints – 2014

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# Guideline on Complaints

*This Guideline is jointly issued by the Competition Commission (the “**Commission**”) and the Communications Authority (the “**CA**”) under section 38 of the Competition Ordinance (Cap 619) (the “**Ordinance**”) to indicate the manner and form in which complaints are to be made in respect of alleged contraventions of the Ordinance.*

*While the Commission is the principal competition authority responsible for enforcing the Ordinance, it has concurrent jurisdiction with the CA in respect of the anti-competitive conduct of certain undertakings operating in the telecommunications and broadcasting sectors.<sup>1</sup> Unless stated otherwise, so far as a matter relates to conduct falling within this concurrent jurisdiction, references in this Guideline to the Commission are to be read as applying to the CA.*

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<sup>1</sup> The relevant undertakings are specified in section 159(1) of the Ordinance. These are licensees under the Telecommunications Ordinance (Cap 106) (the “**TO**”) or the Broadcasting Ordinance (Cap 562) (the “**BO**”), other persons whose activities require them to be licensed under the TO or the BO, or persons who have been exempted from the TO or from specified provisions of the TO pursuant to section 39 of the TO.

## I Introduction

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- 1.1 The Ordinance applies to all sectors of the economy. It prohibits conduct which has the object or effect of preventing, restricting or distorting competition in Hong Kong. This conduct includes anti-competitive arrangements and abuses of a substantial degree of market power. The Ordinance also prohibits mergers which substantially lessen competition. Further guidance on these prohibitions can be found in the Commission's *Guideline on the First Conduct Rule*, *Guideline on the Second Conduct Rule* and *Guideline on the Merger Rule*.
- 1.2 The Ordinance is applied and enforced by the Commission. In the exercise of its enforcement functions under the Ordinance, the Commission encourages input from the public. In particular, the Commission values any input drawing its attention to suspected contraventions of the Ordinance, such as the submission of well-informed complaints.
- 1.3 Section 37(1) of the Ordinance provides that any person who suspects that a competitor, supplier, customer or any other party has contravened, is contravening, or is about to contravene a Competition Rule may contact the Commission to express their concerns and to make a complaint ("**Complainant**"). The Commission also welcomes queries from the public regarding matters which may be within scope of the Ordinance.
- 1.4 Section 37(2) of the Ordinance provides the Commission with the discretion to decide which complaints may warrant investigation. The Commission does not act on behalf of Complainants, and will consider what matters to pursue having regard to the public interest in having a competitive market place, rather than the Complainant's interest.
- 1.5 This Guideline describes the manner and form in which complaints may be made to the Commission. The Guideline also incorporates information on the processes the Commission will use for determining what action to take in relation to a complaint or query.

## 2 Making a Complaint to the Commission

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- 2.1 The Commission relies on complaints and queries from the public as an important means of identifying possible contraventions of the Ordinance. The Commission will accept complaints and queries in any form, including those provided to the Commission:
- (a) directly;
  - (b) anonymously; and
  - (c) through an intermediary (such as a legal adviser).
- 2.2 A complaint or query may be made by telephone, e-mail, post, by completing an online form or in person at the Commission's offices (by appointment only). The relevant contact details are listed in Part 6 of this Guideline.
- 2.3 The Commission will normally acknowledge receipt of any complaint or query it receives.
- 2.4 At the time of making a complaint, it is not necessary to provide all details of the relevant conduct. However, if the Commission requires more information to assess a matter, it will normally contact the Complainant. The Commission will typically request information about the matter including:
- (a) a description of the relevant facts regarding the conduct the Complainant is concerned about;
  - (b) information on any documents that relate to the conduct including copies of those documents where possible;
  - (c) information about the party or parties involved in that conduct;
  - (d) information about other parties affected by the conduct, including contact information where known; and
  - (e) information about the Complainant, including their name, job title, address, telephone and email address.
- 2.5 The Commission expects Complainants to respond to any such requests in a timely manner.
- 2.6 Further guidance on information the Commission will routinely seek from Complainants may be published on the Commission's website from time to time.

## 3 Confidentiality

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### Confidentiality of complaints

- 3.1 The Commission will not normally comment on what matters it is considering or investigating.
- 3.2 The Commission's ability to effectively investigate the complaint may be impeded where a complaint is publicised or otherwise widely known. To support the Commission's ability to conduct effective investigations, the Commission requests that Complainants keep their complaint confidential.

### Disclosure of Complainant's identity

- 3.3 Section 125 of the Ordinance imposes a general obligation on the Commission to preserve the confidentiality of any confidential information (as defined in section 123 of the Ordinance) provided to the Commission, including the source of such information. Section 126 of the Ordinance lists the exceptions to that obligation.
- 3.4 The Commission will not normally disclose the details of a Complainant without their consent. In some cases however, it may be necessary to disclose the Complainant's identity. This includes where disclosure is ordered by the courts,<sup>2</sup> or where the Commission considers it necessary to make a disclosure in the performance of its functions. Section 126(3) of the Ordinance provides that the Commission must consider the extent to which the disclosure is necessary for the purpose sought to be achieved by the disclosure and the need to exclude, as far as is practical, specific categories of information from such disclosure as specified in section 126(3)(a) of the Ordinance.
- 3.5 Where such a disclosure is made, the party who receives the confidential information from the Commission has an obligation under section 128 of the Ordinance to maintain the confidentiality of that information.

### Cooperation between competition authorities

- 3.6 For matters falling within the Commission's concurrent jurisdiction with the CA, section 126(1)(h) of the Ordinance enables the routine exchange of confidential information, including the Complainant's identity, between the Commission and the CA.

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<sup>2</sup> A reference to the 'courts' in this Guideline means the Competition Tribunal, the Court of First Instance, the Court of Appeal and the Court of Final Appeal.

## 4 Assessment of Complaints and Queries

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- 4.1 The Commission will consider any complaint or query it receives regarding anti-competitive behaviour. However, it will not pursue all such complaints and queries. Section 37(2) of the Ordinance provides the Commission with the discretion to decide which complaints may warrant investigation. This includes the discretion not to investigate a complaint further; and the discretion to investigate a complaint even where the Complainant no longer wishes to cooperate with the Commission.
- 4.2 When considering whether it is appropriate to progress the complaint further, the Commission will take into account:
- (a) the subject matter of the complaint and the scope of the Ordinance;
  - (b) any applicable exclusions and exemptions under the Ordinance; and
  - (c) the likely veracity of the complaint, including any supporting information provided with it.
- 4.3 To ensure that its resources are focused on pursuing the public interest, in exercising its discretion to decide which complaints warrant further assessment, the Commission will take a range of factors into account including:
- (a) the potential impact of the alleged conduct on competition and consumers;
  - (b) the Commission's current enforcement strategy, priorities and objectives;
  - (c) other matters currently under consideration by the Commission and the courts;
  - (d) the likelihood of a successful outcome resulting from an investigation; and
  - (e) whether the resource requirements of further investigation are proportionate to the expected public benefit.
- 4.4 These factors mean that the Commission might not pursue a complaint even if it is possible that further investigation may uncover a contravention of the Ordinance.

## 5 Next Steps

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- 5.1 After a preliminary review of a complaint, the Commission will do one of the following:
- (a) take no further action;
  - (b) recommend the Complainant refer the complaint to another agency; or
  - (c) review the matter further by conducting an Initial Assessment.<sup>3</sup>
- 5.2 If the Commission proposes to take no further action or recommends the Complainant refer their concerns to another agency, it will provide an explanation of this outcome to the Complainant in writing.
- 5.3 Even where it initially decides to take no further action, the Commission may later reconsider the issues raised in a complaint or query. This may occur where the Commission has increased capacity to investigate an issue, where additional evidence has been obtained or where a pattern of conduct arises which warrants further consideration.
- 5.4 If the Commission proceeds to conduct an Initial Assessment of a matter, for operational reasons the Complainant is unlikely to be advised of the status of the Commission's consideration of the matter. If consideration of the matter is completed, the Complainant is likely to be informed of the outcome.

## 6 Further Materials and Contact Details

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### Further materials

- 6.1 As set out in paragraph 2.6 of this Guideline, the Commission and the CA may publish additional guidance and other materials for the benefit of Complainants and from time to time. These may be found on the respective websites of the Commission and the CA at [www.compcomm.hk](http://www.compcomm.hk) and [www.coms-auth.hk](http://www.coms-auth.hk).

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<sup>3</sup> Initial Assessments are addressed in detail in the Commission's *Guideline on Investigations*.



## Contact details

### Commission contact details

You can make a complaint or an inquiry to the Commission about general anti-competitive behaviour and conduct that may affect Hong Kong in the following ways:

- Website [www.compcomm.hk](http://www.compcomm.hk)
- Telephone [to be confirmed in the final version]
- Email [to be confirmed in the final version]
- Post/In person: 36/F, Wu Chung House, 197-213 Queen's Road East, Wanchai, Hong Kong

Please see the Commission's website for the most up to date contact details for making a complaint.

### CA contact details

You can make a complaint or an inquiry to the CA about the anti-competitive behaviour and conduct of licensees and other persons operating in the telecommunications and broadcasting sectors in Hong Kong in the following ways:

- Website [www.coms-auth.hk](http://www.coms-auth.hk)
- Telephone [to be confirmed in the final version]
- Email [to be confirmed in the final version]
- Post 29/F, Wu Chung House, 197-213 Queen's Road East, Wanchai, Hong Kong

Please see the CA's website for the most up to date contact details for making a complaint.

