



競爭事務委員會
COMPETITION
COMMISSION



通訊事務管理局
COMMUNICATIONS
AUTHORITY

Revised Draft Guideline on **Complaints**

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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.¹ Unless stated otherwise, where a matter relates to conduct falling within this concurrent jurisdiction, references in this Guideline to the Commission also apply to the CA.

*The Guideline is not, however, a substitute for the Ordinance and does not have binding legal effect. The Competition Tribunal (the “**Tribunal**”) and other courts are responsible ultimately for interpreting the Ordinance. The Commission’s interpretation of the Ordinance does not bind them. The application of this Guideline may, therefore, need to be modified in light of the case law of the courts.*

This Guideline describes the general approach which the Commission intends to apply to the topics covered in the Guideline. The approach described will be adapted, as appropriate, to the facts and circumstances of the matter.

¹ 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

- 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. Such conduct includes anti-competitive arrangements and abuses of a substantial degree of market power. The Ordinance also prohibits mergers which may 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

- 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 on the Commission's website or in person at the Commission's offices (by appointment only). The relevant contact details are listed in Part 6 of this Guideline. A complaint may be submitted on behalf of more than one person or party.
- 2.3 Where the Complainant has provided relevant contact details, the Commission will usually acknowledge promptly receipt of any complaint or query.
- 2.4 At the time of making a complaint, it is not necessary to provide all details of the relevant conduct. However, to assist the Commission in assessing the matter, a Complainant should submit any information that it has or has access to and is encouraged to provide as much of the following information as possible:
- (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, including their contact information where known;
 - (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 in a timely manner to any particular requests for information that the Commission may make.
- 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

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 a complaint may be impeded where the complaint is publicised or otherwise widely known. To support the Commission's ability to conduct effective investigations, the Commission requests that Complainants keep their complaints confidential. If a Complainant elects to disclose their complaint publicly, the Commission asks that the Complainant inform the Commission in advance of any such disclosure.

Disclosure of a 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 provided to or obtained by the Commission, including information that relates to the identity of any person who has given information to the Commission. Section 125(2) of the Ordinance permits the disclosure of confidential information by the Commission in certain circumstances.²
- 3.4 The Commission will not normally disclose the details of a Complainant, and in particular their identity, without the Complainant's consent. In some exceptional cases however, it may be necessary to disclose the Complainant's identity without their consent. This includes where disclosure is ordered by the courts³ or under section 126(1)(b) of the Ordinance where the Commission considers it necessary to make a disclosure in the performance of its functions or in carrying into effect or doing anything authorised by the Ordinance.
- 3.5 When deciding whether or not to disclose confidential information under section 126(1)(b), 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.

² The Commission's *Guideline on Investigations* provides further detail on the use of confidential information by the Commission under the Ordinance.

³ A reference to the 'courts' in this Guideline means the Tribunal, the Court of First Instance, the Court of Appeal and the Court of Final Appeal.

- 3.6 Where confidential information is disclosed, the party receiving the confidential information from the Commission must, under section 128 of the Ordinance, maintain the confidentiality of that information. This includes keeping the identity of a Complainant confidential if it is included in such a disclosure.

Cooperation between competition authorities⁴

- 3.7 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.

4 Assessment of Complaints and Queries

- 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 where the Commission does not consider it reasonable to do so, and the discretion to investigate a complaint even where the Complainant no longer wishes to cooperate with the Commission.
- 4.2 Without limiting what is considered reasonable under section 37(2), the Ordinance provides that the Commission may, in particular, not investigate a complaint if it is
- (a) trivial, frivolous or vexatious; or
 - (b) misconceived or lacking in substance.
- 4.3 When considering whether a complaint is misconceived or lacking in substance, the Commission will have regard to factors including:
- (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 Section 2 of the Ordinance defines 'competition authority' to mean the Commission or the CA. The phrase 'competition authority' when used in this Guideline is used in this narrow sense.

5 Next Steps

- 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.⁵
- 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 additional evidence has been obtained, where a pattern of conduct arises which warrants further consideration or where the Commission has increased capacity to investigate an issue.
- 5.4 If the Commission reviews a complaint further, it will endeavour to keep the Complainant generally informed as the matter progresses. This will always be subject to any overriding considerations, including the Commission's ability to conduct effective investigations and the need to preserve confidentiality. The Commission is therefore unlikely to advise a Complainant of internal procedural steps taken, such as whether a matter is in the Initial Assessment Phase or Investigation Phase.

6 Further Materials and Contact Details

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 from time to time. These may be found on the respective websites of the Commission and the CA at www.compcomm.hk and www.coms-auth.hk.

⁵ 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 anti-competitive behaviour and conduct that may affect Hong Kong in the following ways:

- Website 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.

Complaints or inquiries about the anti-competitive behaviour and conduct of licensees and other persons operating in the telecommunications and broadcasting sectors in Hong Kong can also be made to the CA.

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
- Telephone [to be confirmed in the final version]
- Email [to be confirmed in the final version]
- Post/In person 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.

