

競爭事務委員會  
COMPETITION  
COMMISSION

# Introduction to the Competition Ordinance



# Full Implementation of the Competition Ordinance

Since 14 December 2015

- The Competition Ordinance has been in full effect to prohibit undertakings from engaging in anti-competitive conduct through three conduct rules

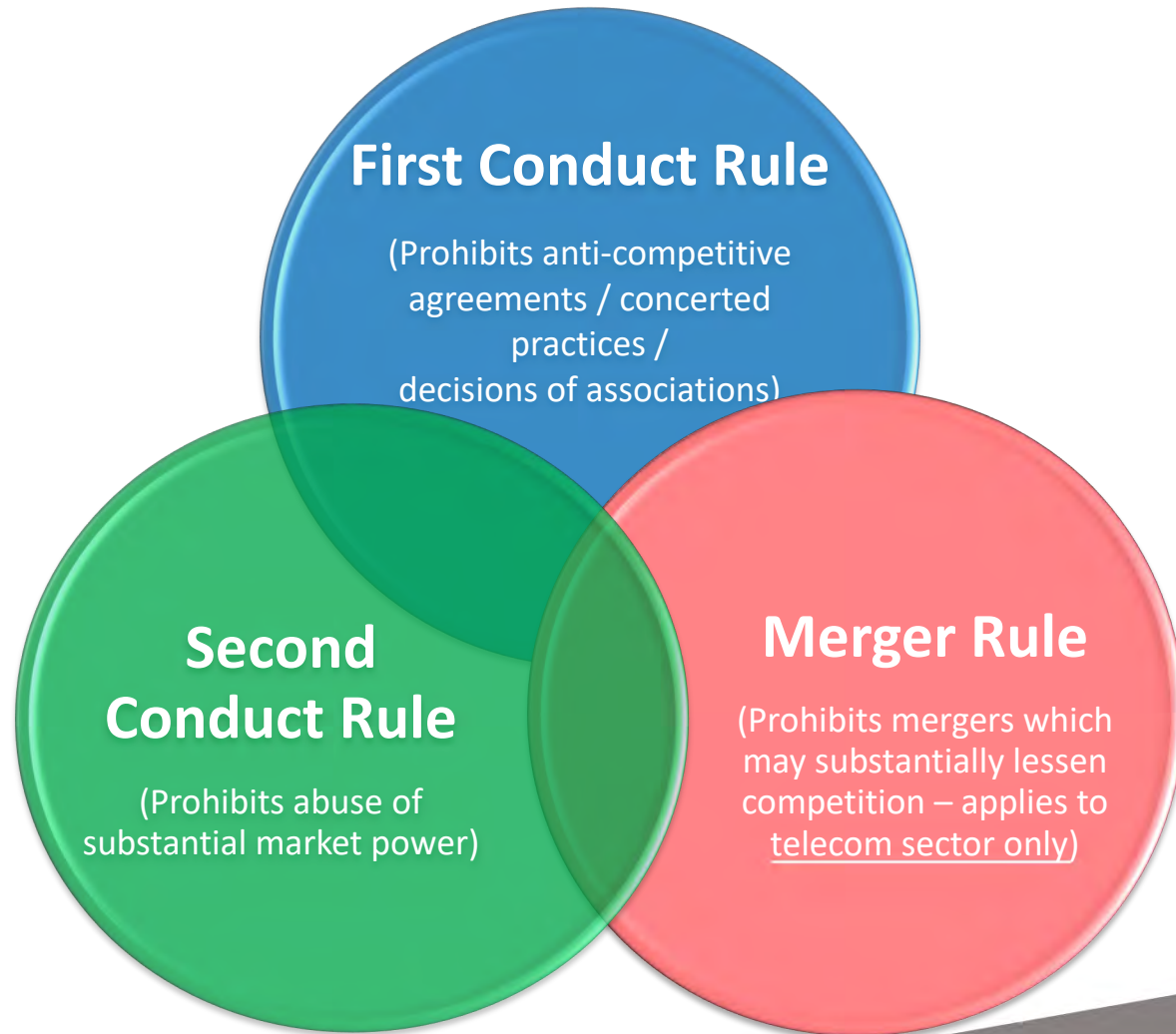


# Benefits of Competition

<b>For Consumers</b> (including <b>Corporate Consumers</b> )	<b>For Businesses</b>
<ul style="list-style-type: none"><li>■ Better prices</li><li>■ Better quality of products and services</li><li>■ More choices</li></ul>	<ul style="list-style-type: none"><li>■ Drives business efficiency and cost savings</li><li>■ Encourages innovation</li><li>■ Offers more opportunities for market entry</li></ul>



# Competition Rules



# First Conduct Rule: The Four Don'ts

## Don't cheat. Compete. – The Four Don'ts.

**Businesses, regardless of their size,** should **never** agree with their competitors to:

- **Fix prices**
- **Share markets**
- **Restrict output**
- **Rig bids**

**Do not** engage in **cartels !**

These are **serious anti-competitive conduct.**



# First Conduct Rule – *Price Fixing*

- Competitors agreeing to **fix, increase, lower, maintain or control the price** for the purchase or sale of goods or services
- May involve competitors agreeing upon **a specified price, a price range or a formula to calculate prices**
- “Price” includes any element of price including **discounts, rebates, promotions, credit terms etc.**
- **Regardless of the form of the agreement:** verbal, written, electronic, etc.
- Competitors should independently determine the prices of their goods or services

*“Let's fix our profit margin at 10% to ensure market stability.”*



# First Conduct Rule – *Market Sharing*

- Competitors collude to divide up markets by agreeing:
  - Not to sell to each others' **customers**
  - Not to compete in each other's **agreed territories/ geographical areas**
  - Not to compete in the **production or sale of certain products or services**
  - Not to **enter or expand into a market where another party to the agreement is already active**

*"If you don't compete with me in Kennedy Town, I won't compete with you in Sai Ying Pun."*



# First Conduct Rule – *Output Restriction*

- Any form of arrangements between competitors to reduce the **volume** or **type** of goods or services available in the market
- Competitors should make decisions on what and how much they produce independently

*“We should cut our output to address the problem of oversupply.”*





# First Conduct Rule – *Bid-rigging*

- When two or more bidders secretly agree that they will not compete with one another for particular projects
- Bid-rigging can take a number of forms, for example:
  - **Bid suppression**
  - **Cover bidding**
  - **Bid rotation**
  - Others: agree on **minimum bidding prices**, or agree that **the winning bidder will reimburse other bidders' bid costs**
- Competitors should make their tender decisions independently

*"I'll bid high on this tender if you let me win the next tender."*



# How to Prevent and Detect Bid-rigging

- Learn about the market
- Raise employees' awareness of bid-rigging cartels
- Set selection criteria carefully and maximise participation of bidders
- Minimise communications among bidders
- Invite bids with itemised costs
- Consider the use of independent consultants if needed
- Develop a database to collect past information on bids and conduct analysis of bid data
- Review selected tenders periodically and establish internal procedures that encourage or require employees to report suspicions
- Include **“Non-collusion clauses”** in tender documents



# Non-Collusion Clauses

- Published by the Commission for procurers' reference and adaptation
- Including non-collusion clauses in **tender documents**: to alert tenderers of the prohibitions against, and consequences of cartel conducts
- Including non-collusion clauses in **formal contracts**: to provide contractual protections to procurers in the event that the tender process has been subject to collusion
- Procurers may consider adding other requirements, e.g. tenderers have to provide information regarding their shareholding structure and/or ultimate controlling entities as requested. This would help procurers better understand the identity of the tenderers



Model Non-Collusion Clauses and  
Non-Collusive Tendering Certificate

Chinese:

<http://bit.ly/CCNonCollusionChn>

English:

<http://bit.ly/CCNonCollusionEng>



# Non-Collusive Tendering Certificate

- For tenderers to sign as part of their tender submission to declare that the bid is developed independently
- For tenderers to commit to disclosing sub-contracting arrangements relating to the tenders
- Where the bid is submitted jointly by two or more parties (e.g. multiple persons or companies acting in a joint venture), all such parties should sign the certificate



# Suspicious signs in documents submitted

- Bids containing identical wording, particularly if the wording is unusual
- Bids containing the same handwriting or using identical forms or stationery
- Bids containing the same errors e.g. spelling mistakes or mistakes in calculations
- Sudden and identical increase in price by most bidders while there have been no substantial cost increase
- Bids with identical pricing either on a lump sum basis or line item basis
- The same amendments being made to bids from different bidders
- Last minute amendments made to bids without clear reasons
- Indications that bidders have communicated with each other



# What to do if you suspect cartel conduct

- When reporting to the Commission, complainants and whistleblowers should **provide the Commission with as much information as possible**
- **Preserve all available evidence** as soon as you suspect cartel conduct. All documents should be preserved in their original state
- **Keep notes of any conversations** you have with the bidders and other relevant parties (e.g. consultants)
- **DO NOT** indicate to the suspects or make public the fact that you are making a complaint to the Commission. This will alert the cartel members and may reduce the prospect of the Commission securing sufficient evidence
- The Commission will generally seek to protect any confidential information provided to it

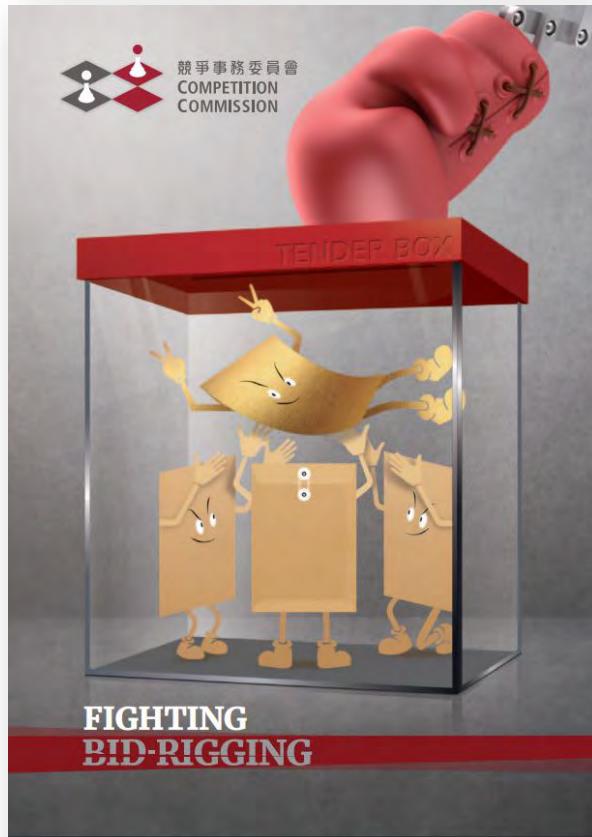


# Complain and Report

- Completing an Online Complaint Form available on the Commission's website:  
[www.compcomm.hk](http://www.compcomm.hk)
- Email: [complaints@compcomm.hk](mailto:complaints@compcomm.hk)
- Reporting number: (852) 3462 2118
- Leniency hotline: (852) 3996 8010
- Post: Competition Commission  
19/F, South Island Place,  
8 Wong Chuk Hang Road,  
Wong Chuk Hang, Hong Kong
- In person at the Commission's office (by appointment only)



# Publications



Please visit the Commission's website for more details:

[www.compcomm.hk](http://www.compcomm.hk)





# Thank You!

