

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

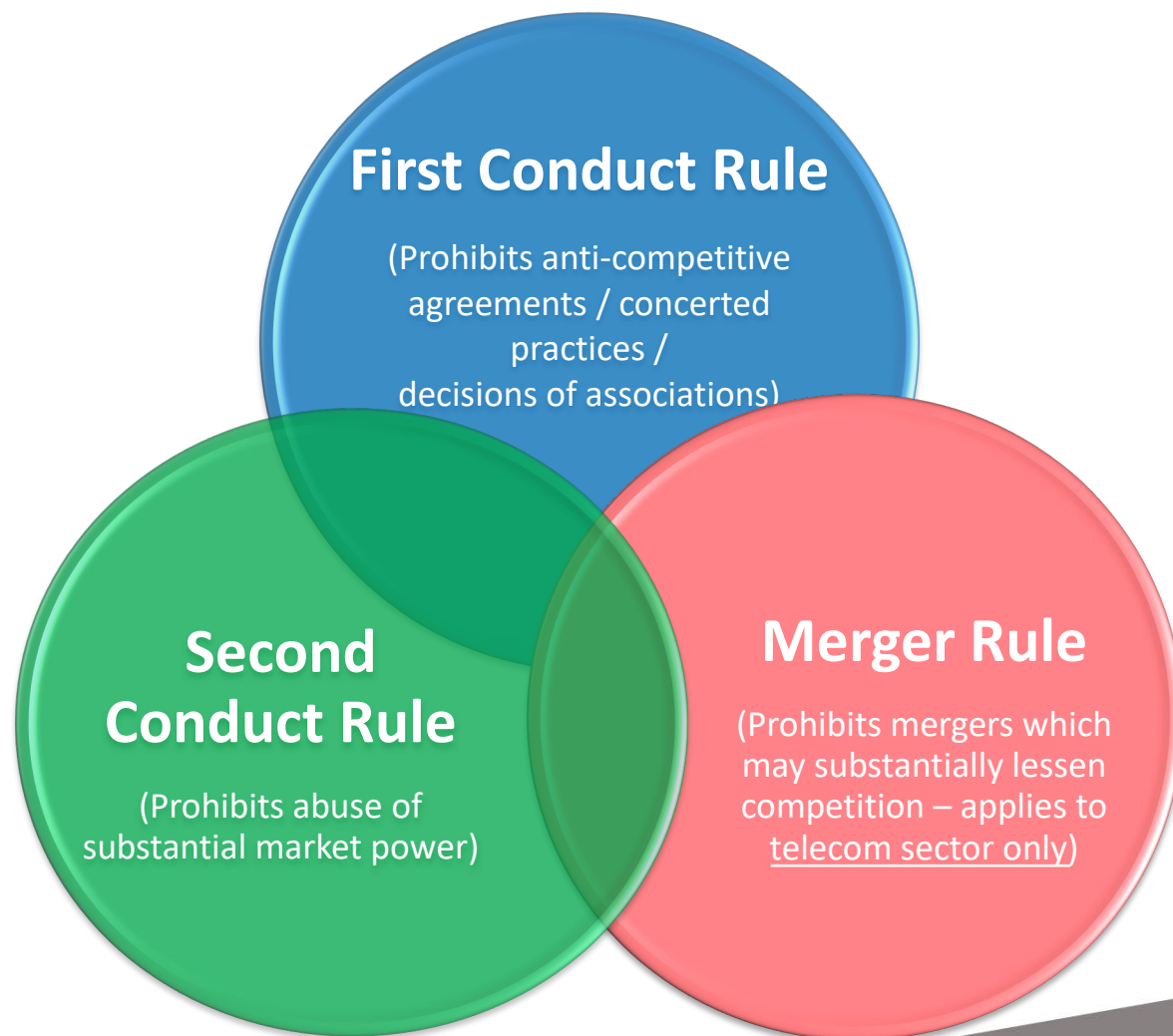


Benefits of Competition

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



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."



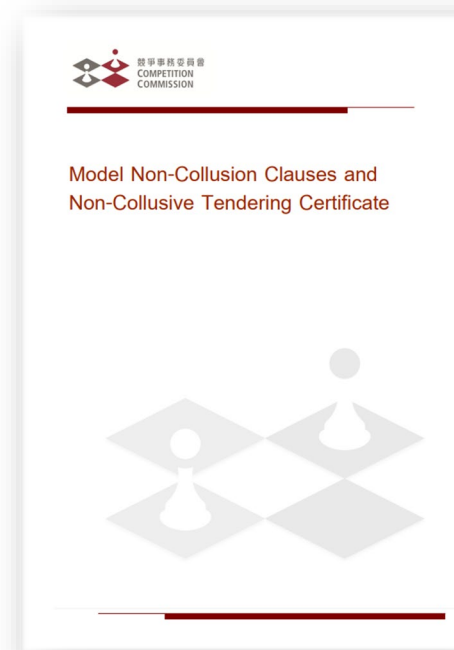
How to Prevent and Detect Bid-rigging

- 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

- The Commission has published model Non-collusion Clauses (NCC) for procurers to adapt and include in their **invitation to bid documents** and **contracts**
- Model NCC consists of (1) non-collusion wordings; (2) a certificate for bidders to sign to declare that the bid is developed independently
- Model NCC serves to (1) warn bidders of the prohibitions against, and consequences of entering into anti-competitive arrangements; (2) to provide contractual remedy for procurers in the event that the clauses have been breached
- Model NCC has recently been enhanced to require bidders to **disclose beneficial ownership**



Chinese:

<http://bit.ly/CCNonCollusionChn>

English:

<http://bit.ly/CCNonCollusionEng>

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
- Email: 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



Thank You!

