

Statement by the Competition Commission regarding the COVID-19 outbreak

27 March 2020

The Competition Commission (“**Commission**”) acknowledges the ongoing challenges which the outbreak of COVID-19 poses to business operations and the supply of critical goods and services in Hong Kong.

Businesses and consumers may have questions about the work of the Commission or concerns about the application of the Competition Ordinance (Cap. 619) (“**Ordinance**”) during this period.

The Commission issues the present statement to address such questions and concerns.

Application of the Ordinance during the COVID-19 outbreak

The Commission continues its operations to enforce the Ordinance, which remains in effect during the COVID-19 outbreak. It nonetheless recognises that there could be a need for additional cooperation between businesses in certain industries on a temporary basis, particularly to maintain the supply of essential goods and services to consumers. The Commission intends to take a pragmatic approach in its enforcement and advisory functions in respect of measures which are genuinely necessitated by the COVID-19 outbreak and in the interests of Hong Kong consumers and society. Further guidance in this respect is provided *below*.

As the Ordinance continues to apply in full, however, the Commission will remain vigilant to protect consumers from anti-competitive conduct by businesses seeking to take advantage of the outbreak or using the outbreak to justify improper collusion or other anti-competitive conduct. Such conduct will be subject to the full force of the law. Consumers or businesses which are aware of such conduct taking place should lodge a complaint to the Commission, while businesses already involved in such conduct should approach the Commission for leniency or cooperation. Further details of these processes are available *on the Commission’s website* (www.compcomm.hk).

Cooperation genuinely necessitated by the COVID-19 outbreak

Guidance on potentially relevant arrangements

The Commission’s Guideline on the First Conduct Rule (“**Guideline**”) contains detailed guidance on the application of the Ordinance to the types of cooperative arrangements which businesses may be contemplating in response to the COVID-19 outbreak.

In this respect, the following statements from the Guideline may be of note:

- *Joint buying*. In general, joint buying is unlikely to give rise to concerns under the First Conduct Rule if the parties do not have market power in the relevant downstream markets. See further Guideline, paragraphs 6.31-6.37.

- *Joint production agreements.* Where a joint production agreement allows parties to produce a product that they would not, objectively, be able to produce alone, the agreement will not likely run afoul of the Ordinance. See further Guideline, paragraphs 6.95-6.100.
- *Sales-related joint ventures.* Businesses often agree to jointly sell, distribute or market particular products (together, “**sales-related joint ventures**”). A sales-related joint venture does not give rise to competition concerns where the joint venture is objectively necessary for a party to enter a market it could not have entered on its own or with a smaller number of parties than those actually involved in the collaboration. See further Guideline, paragraphs 6.107-6.114.
- *Exchange of information:* Businesses may share information on matters such as best practices or publicly available information without risks under the First Conduct Rule. Concerns will generally arise where information is ‘competitively sensitive information’. See further Guideline, paragraphs 6.38-6.49.

For the avoidance of doubt, the above statements should be read alongside the full text of the Guideline in relation to these arrangements.

Informal engagement with the Commission

Where businesses propose temporary cooperative measures which are genuinely necessitated by the COVID-19 outbreak and in the interests of Hong Kong consumers and society (“**proposed measures**”), they or their relevant industry bodies are welcome to contact the Commission. The purpose of such engagement would be to discuss how the Commission considers the Ordinance to apply to the proposed measures.

The Commission will aim to handle such engagement on an expedited basis. In relation to proposed measures, it will endeavour to provide initial views on an informal basis within five working days of receiving all necessary information on the measures, subject to exceptional resource constraints.

Contacting the Commission

Parties contacting the Commission are requested to provide all available details of the proposed measures and an explanation of why they are necessary in light of the COVID-19 outbreak.

Parties should contact the Commission by email at enquiry@compcomm.hk or by using the Online Enquiry Form ([HERE](#)) on the Commission’s website. The term “COVID-19” should be included in the subject line of any contacts with the Commission.

Provisos

This informal engagement process will be available from the date of publication of this statement until such time as the Commission announces that it is no longer available or has been amended. For arrangements that do not amount to proposed measures, the Commission’s existing enquiries and applications processes will remain available.

The process does not negate the ability of businesses to self-assess their own conduct or to seek independent legal advice, which may in most instances be the preferable course of action.

To avoid possible enforcement risks, businesses wishing to contact the Commission under this informal engagement process are advised to do so before making or giving effect to the relevant arrangements.
