

**16th Business Liaison Group Meeting
with the Trade of Recreational Clubs**

Date: 17 March 2016
Time: 2:30 p.m.
Venue: Conference Room 2, G/F, Tamar Central Government Offices, Admiralty
Convenor: Mr CHAN Wah-chan Head, Business Facilitation Division,
Economic Analysis and Business Facilitation Unit

Trade Attendees:

The Helena May

Ms Betty SIMPSON General Manager

Royal Hong Kong Yacht Club

Ms Susanna CHUNG Human Resources Manager
Ms Polly LEE Executive Secretary
Mr Carton LAM Technical and Projects Manager
Mr Lorence LEUNG House Manager

Gold Coast Yacht and Country Club

Mr James WONG Housekeeper

Chinese Recreation Club

Mr Theo LAU General Manager
Mr Gordon CHU Property Maintenance Officer
Mr Batto LO Housekeeping Officer

Hill Top Country Club

Mr Carl CHAN Finance and Administration Manager

The Hong Kong Jockey Club

Ms Irene TAM Hospitality Services Manager

The Repulse Bay Club

Ms Kitty LAM Legal Counsel
Ms Sandy CHOI Director of Finance
Mr Jason LAW Restaurant Manager

Victoria Recreation Club

Mr Robert COOK General Manager

Zetland Hall

Mr Henry Kwok General Manager

Government / Related Organisation Representatives:

Competition Commission (the Commission)

Mr Carter CHIM Manager (Legal)

Ms Christine CHAN Manager (Operations)

Home Affairs Department (HAD)

Mr Paul HEUNG Building Surveyor/Licensing Authority

Buildings Department (BD)

Mr Colin CHENG Senior Building Surveyor/New Territories West 2

Greening, Landscape and Tree Management Section, Development Bureau (GLTMS)

Miss Angie AU YEUNG Assistant Secretary (Tree Management)1

Economic Analysis and Business Facilitation Unit (EABFU)

Mr Peter FUNG Chief Management Services Officer (Business Facilitation)2
(Secretary)

Miss Jenny YEUNG Business Facilitation Officer

Observers:

Mr Victor LAM Member, Task Force on Business Liaison Groups (BLGTF)

Mr Joseph LEUNG Member, BLGTF

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The **Convenor** welcomed all to the meeting. He said that the notes of the last meeting had been posted to the Business Facilitation Initiatives website (http://www.gov.hk/tc/theme/bf/pdf/RC_BLG_15_Notes.pdf) for the trade's reference.

Agenda Item 1 – Compliance issues related to shared use of survey data/information on recreational clubs under the Competition Ordinance (Cap. 619)

2. In response to the trade's concerns on the shared use of survey data, **Mr Carter CHIM** said that the trade needed to fully understand the First Conduct Rule under the Ordinance before they could understand what information could or could not be exchanged. The First Conduct Rule prohibited competitors from collusions that would restrict competition, as such, the following are the four serious anti-competitive conducts business should never engage with their competitors under the First Conduct Rule –

- **Price Fixing:** any form of arrangements between competitors to fix any components of the price, e.g., raise prices or reduce discounts or rebate etc.
- **Market Sharing:** any form of arrangements between competitors to reduce volume or type of goods or services available in the market
- **Output Restriction:** any form of arrangements between competitors to allocate geographical areas, customers or market share
- **Bid Rigging:** any form of arrangements between competitors not to bid, to withdraw bids or to bid high in order to support a pre-determined winner

3. **Mr CHIM** said that information exchange was related to the First Conduct Rule because it might lead to price fixing, market sharing etc. between competitors.

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There was a real case in the United Kingdom (UK) where a significant number of private schools came together and told each other how much they were going to adjust their tuition fees in the upcoming academic year. Even though they did not enter into any agreement on fixing the actual amount of school fee, the sharing of information had the same effect as price fixing in practice because the schools involved were informed of the future business strategies of their competitors in order to set their own price. This type of information exchange was prohibited by the Ordinance. Similarly, when bidders shared their quotation price with each other, even though they had not made an agreement on who should win, they might be indirectly pre-determining the winner of the tendering exercise and thus the conduct was anti-competitive.

4. In order to determine whether the exchange of information was anti-competitive, **Mr CHIM** suggested the trade to consider whether it was designed to remove uncertainty as to each other's future conduct on the market or to reduce strategic uncertainty in the market. To answer the question, the trade should take into account the following factors (the list was not exhaustive) -

- Market structure – is the market oligopolistic? concentrated? information asymmetry?
- Type of information exchanged – public or confidential? aggregated or individualized? historical, current or future? sensitive information involved? its importance for the fixing of prices, volumes or conditions of service?
- Conditions of exchange – frequency of exchange? manner of exchange? direct or indirect exchange?
- Purpose of exchange – any justification?

5. **Mr CHIM** gave two hypothetical examples on information exchange for illustration. In the fruit market, the local retailers engaged an independent consultant to do a survey on the aggregate market demand to determine the amount of fruit to be imported from overseas. The data was aggregated, and the retailers were not able to predict each other's price strategies by looking at the data. Moreover, the data was also historical, it was about how much fruit was needed in the market previously, and the retailers could not predict each other's price strategies by looking at that too. As such, this information exchange was less likely to be anti-competitive because it did not remove uncertainty as to each other's future conduct on the market or reduce strategic uncertainty in the market. On the other hand, if a few companies came together and told each other the price each individual company was going to charge in the coming year, even they did not enter into any agreement on the price level, it could be an indirect form of price fixing and thus the conduct was anti-competitive.

6. **Ms Susanna CHUNG** opined that sharing of historical information should definitely not contravene the Ordinance. **Mr CHIM** advised that without knowing the case details, there was no simple answer to the enquiry as it would depend on the market structure, nature of competition, and the actual effect of the information shared. Should the sharing of such information help fix price among competitors, or assist competitors in the market to passively collude, it would be anti-competitive.

7. **Mr Theo LAU** opined that recreational clubs were not competitors with each

other, and the price they charged for food and beverages services would not affect decision on subscription fees. He enquired whether the surveys conducted by the trade association had contravened the Ordinance under these conditions. **Mr CHIM** advised that he could not give a simple answer without in-depth investigation into the situation because he did not fully understand the nature of the competition among recreational clubs, the purpose of the surveys, and how the survey would affect the competition etc. He advised the trade to refer to the aforementioned factors for self-assessment or consult their legal advisors.

8. **Mr LAU** enquired whether the Commission would give a more definite response if the trade association could submit relevant information relating to the surveys for its investigation. **Mr CHIM** advised that the trade could make an application to the Commission for investigation pursuant to section 9 of the Ordinance. However, he cautioned the trade to consult legal advisors first because the Commission might use such information against them should the conduct was found to be anti-competitive after the investigation.

9. **Mr Henry KWOK** said that the Commission should first understand the structure of the club industry before putting a stop to conducting surveys. He said that every club was unique in terms of the cost structure and recreational clubs could not fix their price by simply referring to the survey results. **Mr CHIM** said that the Commission would not stop any economic activities without understanding the nature of competition on the market. As there were over thousands of industries in Hong Kong, it was not possible for the Commission to approach each and every one of them before the implementation of the Ordinance. However, the Commission would put their best effort when looking into every case. There was a period of more than three years between the enactment of the Ordinance and the full implementation of the Ordinance, and during this period, the Commission had published guidelines on its website which explained all the major principles and conducted many publicity campaigns.

10. **Ms Kitty LAM** opined that as conducting survey was a widely used business tool, she suggested the Commission to publish more detailed guidelines on this subject. **Mr CHIM** thanked Ms LAM and said that the Commission would take her suggestion into consideration.

Agenda Item 2 – Briefing on implementation of the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) (Amendment) Regulation 2015(Amendment Regulation) relevant to recreational clubs

11. **Mr Colin CHENG** gave a briefing on the subject with his presentation slides at Annex 1. He highlighted that the Amendment Regulation was fully implemented on 14 December 2015 and covered the following areas –

- introduction of new categories of building uses;
- enhancement of the standards for the provision of more female sanitary fitments;
- rationalisation of the standards for restaurants; and

- other technical amendments and drafting changes.

12. **Mr CHENG** said that the Amendment Regulation was applicable to nine categories of building uses, including offices/places of work, restaurants and sports stadia which were commonly found in recreational clubs. For existing club premises, the Amendment Regulation was applicable to renovations under the following two conditions, (1) when there was extension: for example, when an existing restaurant was enlarged by including more area/building and became one unified restaurant; or (2) when there was change in building use: for example, when an office floor was changed into a sports stadium. If a restaurant floor was swapped with an office floor, the Amendment Regulation would be applicable to both floors because both restaurant and office uses were covered by the Amendment Regulation, and the swapping would be deemed as changes in building uses on both floors.

13. **Mr CHENG** advised that should the trade face insurmountable difficulties when trying to comply with the Amendment Regulation, they could apply for exemption with justifications. BD would take a pragmatic approach in considering the application on a case-by-case basis.

Agenda Item 3 – Consultation on Draft Handbook on Tree Management (HTM)

14. **Miss Angie AU YEUNG** gave a briefing on the draft HTM with her presentation slides at [Annex 2](#). She said that the draft HTM provided tree owners with guidelines and good practices in management of trees. The key components of the draft HTM were –

Part 1 – Duty of care of tree owners

A property owner was the tree owner and could be held liable for accidents caused by trees under the Common Law Duty of Care and the Occupiers Liability Ordinance (Cap.314). He also needed to observe provisions in the land lease on tree care if applicable.

Part 2 – Key steps in tree risk management

The tree owner should prepare a tree inventory for all the trees within the club premises, and carry out tree risk assessment regularly. They should engage qualified professionals to undertake tree works.

Part 3 – General tree care

Tips and easy steps to take for better tree planting and maintenance, as well as reducing defects and minimising tree risks.

15. **Mr Robert COOK** commented that it would be very costly to conduct risk assessment yearly by qualified professionals on every single tree because there were a lot of trees on his club premises. **Miss AU YEUNG** said that the tree owners could target their resources by doing tree group inspection (Form 1) in target area of higher tree risks first, and then undertake individual tree risk assessment (Form 2) for those trees which required detailed assessment.

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16. **Mr COOK** said that the tree canopies in his club premises were so big and dense that blocked the sunlight and the grasses underneath were not growing, causing soil erosion. He enquired whether GLTMS provided any guidelines on tree canopies. **Miss AU YEUNG** advised the trade to engage qualified professional to assess the conditions of the trees. The trade should undertake regular pruning on the trees to cut away dead branches and to thin the canopies. This would benefit the lawn underneath by allowing light to penetrate through and help them grow healthily, thereby reducing tree risks.

17. **Mr LAU** said that since there was a tree preservation clause in the land lease of his club, he had to do compensatory planting when there was a tree removal, but the number of compensatory trees as requested by the LandsD was too many for them to grow healthily in one small area. **Miss AU YEUNG** advised the trade to keep communicating with the LandsD should they encounter any problems in compensatory tree planting. The **Convenor** said that the subject on compensatory planting had been discussed at a previous BLG meeting and the trade could make reference to the relevant meeting notes (<http://www.gov.hk/en/theme/bf/pdf/Notes-RC11v.5.pdf>).

18. **Ms Betty SIMPSON** commented that the draft HTM was very useful to the trade and enquired whether there would be hardcopies of the finalized version. **Miss AU YEUNG** said that there would be hardcopies after the promulgation of the soft copies, and would be distributed to the industry through normal government distribution channels.

19. **Miss AU YEUNG** said that if the trades had any suggestions or feedback on the draft HTM, they could provide them to GLTMS through the trade association or the BLG secretariat. The trade could send their feedback no later than 24 March 2016.

(Post meeting notes: The BLG secretariat forwarded the trade's feedback to GLTMS on 24 March 2016)

Agenda Item 4 – Date of the next meeting

20. The **Convenor** said that the secretariat would inform the trade of the date of the next meeting in due course.

Economic Analysis and Business Facilitation Unit

March 2016