

## Commission strikes again: third renovation cartel case with repeat offenders

July 2019

### Introduction

On 3 July 2019, the Hong Kong Competition Commission (**Commission**) took to the Competition Tribunal (**Tribunal**) another renovation cartel case against six decoration contractors and three individuals, including one company and one individual as repeat offenders. The Commission is seeking, among other things, a disqualification order against a director, but it is not seeking pecuniary penalties against him or any declaration that he contravened the First Conduct Rule. This suggests that the Commission is determined to deter anti-competitive behaviours in the building renovation sector and will not hesitate to hold directors accountable even if they are not alleged to have been personally or directly involved in the anti-competitive conduct.

### Similarities with earlier cases

In *Competition Commission v Fungs E & M Engineering Company Limited and others*, the Commission alleges that the decoration contractors allocated customers and coordinated pricing in relation to the provision of renovation services at a public housing estate. There are striking similarities and links between this case and the Commission's first and second renovation cartel cases: *Competition Commission v W Hing Construction Company Limited and others*, the first judgment of which has been handed down by the Tribunal on 17 May 2019 (see our previous [Client Briefing](#)), and *Competition Commission v Kam Kwong Engineering Company Limited and others*, which remains to be heard by the Tribunal (see our previous [Client Briefing](#)).

Firstly, the allegations of anti-competitive conduct are very similar in substance. All three cases have involved: (i) the allocation of customers of public or subsidised housing estates amongst the contractors; and (ii) the production and distribution of identical or similar flyers or leaflets with prices of decoration packages.

Secondly, both the present case and the second renovation cartel case were discovered as a result of a complaint from a member of the public. The Commission received the complaints about both cases in August 2017, shortly after commencing proceedings for the first renovation cartel case.

Thirdly, in the latest two cases (neither of which has been tried by the Tribunal), the Commission has commenced proceedings against a total of five individuals who were managers and/or directors of the companies involved. All but one of the individuals are alleged to have either: (i) aided and abetted, counselled or procured others to contravene the First Conduct Rule; or (ii) been, directly or indirectly, knowingly concerned in or parties to the contravention. In relation to these individuals, the Commission is seeking pecuniary penalties and/or director disqualification orders.

Finally, the present case involves repeat offenders in that both the 5<sup>th</sup> and 8<sup>th</sup> Respondents in this case, Luen Hop Decoration Engineering Company Limited (**Luen Hop**) and Mr. Wong Fu San (**Wong**) were recently held liable by the Tribunal in the first renovation cartel case. The conduct in that case and the present case took place in adjacent housing estates within 18 months of each other.

## Personal liability in the form of a disqualification order only

It is interesting that the Commission is seeking to disqualify Mr. Cheung Yun Kam (**Cheung**) as a director, but yet is not seeking a pecuniary penalty (or even a declaration of contravention) against him, unlike the rest of the individuals who have been named as respondents to date. However, Cheung is a director of Luen Hop, which is a repeat offender as mentioned above. Luen Hop's day-to-day business activities at the housing estates were managed by Wong, who is also a repeat offender.

In seeking a director disqualification order against Cheung, the Commission alleges that Cheung's conduct as a director of Luen Hop makes him unfit to be concerned in the management of a company, on the ground that he had actual knowledge or reasonable grounds to suspect that Luen Hop was contravening the First Conduct Rule and took no steps to prevent it. In particular, the Commission alleges that by March 2017 (at the latest), Cheung knew that Wong was suspected by the Commission to have engaged in anti-competitive conduct at a nearby public housing estate<sup>1</sup>. Alternatively, the Commission alleges that Cheung is unfit to be concerned in the management of a company on the ground that he should have known that the conduct of Luen Hop constituted a contravention.

The grounds which the Commission relies on above are based on section 103 of the Competition Ordinance, which sets out the factors which the Tribunal must have regard to when deciding whether a director is unfit to be concerned in the management of a company. Where the director did not know or contribute to the contravention, these factors include: (i)

whether the director had reasonable grounds to suspect that the conduct of the company constituted the contravention and took no steps to prevent it; and (ii) whether the director ought to have known about the contravening conduct. The present case highlights that the Commission is willing to rely on these factors and seek a disqualification order without alleging that the director is personally or directly involved in the alleged contravention of a competition rule.

## The Commission's interest in the building renovation sector

As noted in the [press release](#) by Mr. Brent Snyder (**Snyder**), the Chief Executive Officer of the Commission, "*This is the third market sharing and price fixing case that the Commission has filed over the past two years in relation to the provision of renovation services at public housing, an indication that such practices have been prevalent in the sector.*" The fact that the Commission has taken yet another renovation cartel case to the Tribunal shortly after the Tribunal handed down its first judgment in the first renovation cartel case sends a strong signal that the Commission is determined to deter anti-competitive behaviours in the building renovation sector.

It is worth noting that the conduct in the present case was alleged to have commenced in June 2017, which overlaps with the Commission's investigation of the first renovation cartel case. By August 2017, there should have been significant public attention generated by the Commission's filing of the first renovation cartel case, and yet the conduct in question was alleged to have continued until at least November 2017.

---

<sup>1</sup> On 8 March 2017, Wong had an interview with the Commission in respect of the first renovation cartel case.

Finally, all three renovation cartel cases have concerned public or subsidised housing estates. This is reflected in the Commission's repeated emphasis on protecting Hong Kong's most vulnerable consumers. In a recent [speech](#), Snyder said that "*the focus should be on the harm to the victimized consumers rather than the size of the cartel*" and referred to residents of public housing estates as being among the very most vulnerable of Hong Kong's citizens.

### Conclusion

While it may seem surprising that the Commission has taken a third renovation cartel case to the Tribunal, this case highlights the Commission's continued focus on individual liability, this time by showing that it is prepared to seek a disqualification order against directors who are not alleged to have been personally involved in the anti-competitive conduct. It also shows the Commission's determination to deter anti-competitive behaviours in the building renovation sector and to protect vulnerable consumers.



**Natalie Yeung**

T +852 2901 7275

E [natalie.yeung@slaughterandmay.com](mailto:natalie.yeung@slaughterandmay.com)

© Slaughter and May 2019

**This material is for general information only and is not intended to provide legal advice. For further information, please speak to your usual Slaughter and May contact.**

Dated July 2019