

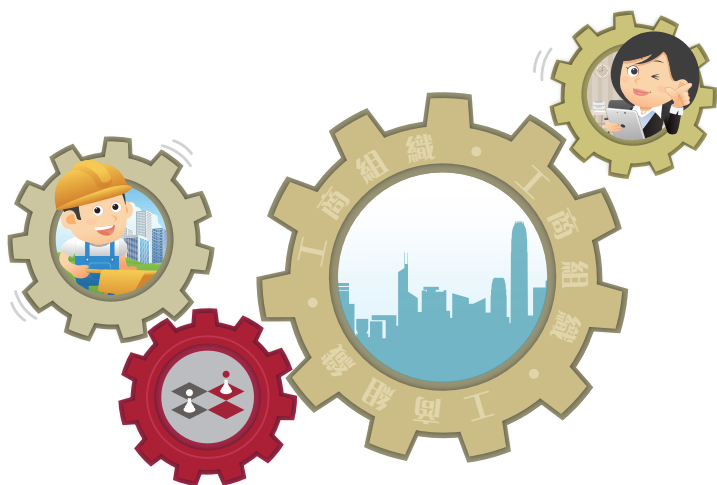
《競爭條例》

與

工商組織



競爭事務委員會
COMPETITION
COMMISSION



《競爭條例》(《條例》)

禁止企業的反競爭行為，從而推動競爭並促進經濟增長。反競爭行為包括競爭對手之間訂立損害競爭的協議。

工商組織在促進會員的利益方面起著重要作用。他們在教育其會員遵循《條例》，以及推動有利於競爭的合規文化方面，均擔當著關鍵角色。工商組織在協調會員的同時，亦須明白他們在《條例》下所要履行的責任。

違反《條例》有可能為組織及其會員帶來嚴重後果。

本小冊子為工商組織提供「可做」和「不可做」的實用貼士，以盡量減低違反《條例》的風險。

可做



1. 繼續幫助會員了解行業的發展，及向政府和客戶爭取業界權益。
2. 教育會員遵循《條例》。
3. 為組織制訂《條例》的合規政策，選出一名人員負責監督組織的合規工作。
4. 向會員收集資料時應審慎從事，切勿協助會員交換影響競爭的敏感資料（參閱「不可做」的第 6 點）。資料應由組織的職員或獨立於會員的第三方處理。以匿名、綜合的形式分發已過去的資料，其構成問題的可能性會較低。*[參閱虛構示例 1]*
5. 確保組織的會籍是以清楚、客觀及定性的準則發出，亦要為拒絕入會申請或終止會籍等情況訂立上訴程序。
6. 工商組織如有為會員提供認證或頒發品質標籤來認可他們符合特定的行業標準，便須確保有關認證是取決於客觀和合理的品質要求，且所有符合要求的企業均可獲得認證。*[參閱虛構示例 3]*
7. 工商組織如有就產品或服務的供應訂立標準條款，則必須開放制訂標準的過程，讓其會員參與，並確保這些條款不會影響向消費者收取的價格。標準條款應該不具約束力，且所有會員或非會員均可取得有關條款的內容。*[參閱虛構示例 4]*

不可做



1. 不可建議或要求會員把產品的價格或服務的收費定於某指定水平。
2. 不可對會員售賣產品的其他條款及條件作出限制 (例如: 訂定銷售的信貸條款)。
3. 不可協助會員瓜分銷售領域, 包括以地區、顧客種類或產品種類瓜分。
4. 不可為會員訂定或建議其產量目標。
5. 不可協調或協助會員合謀投標。
6. 不可協助會員分享影響競爭的敏感資料, 敏感資料指企業一般不希望競爭對手知悉的策略性資料。一般而言, 涉及產品或服務的價格 (包括未來定價意向) 及銷量的資料最為敏感。[參閱虛構示例 2]
7. 不可安排或鼓勵會員針對特定人士 / 企業進行集體杯葛。[參閱虛構示例 5]
8. 不可設立會限制或減少會員間競爭的規則或守則, 例如: 規定會員不得招聘競爭對手的僱員, 或限制會員的折扣 / 推廣活動。
9. 不可使用任意的規則招收和 / 或開除會員。
10. 不可阻止會員制訂其他標準或提供不符合組織標準的產品。

虛構示例 1

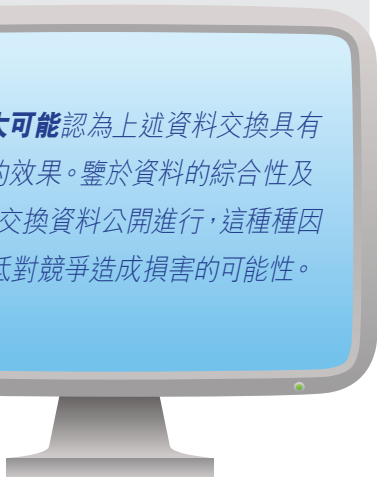
香港只有五間供應包裝鮮果的商號。因鮮果的需求隨季節變化，各供應商經常產生大量未售並壞掉的貨品。為了解決此問題，供應商要求他們的行業協會聘用一間獨立市場研究公司，負責每天



整理未售鮮果的資料。該公司每週在其網站上公佈未售鮮果的綜合資料，讓供應商可更準確預測需求。各供應商或行業協會的職員均無法識別個別供應商的一些影響競爭的敏感資料。

該行業協會向競委會查詢，這種會員間的資料交換會否構成競爭問題。

競委會**不大可能**認為上述資料交換具有損害競爭的效果。鑒於資料的綜合性及歷史性，且交換資料公開進行，這種種因素均會減低對競爭造成損害的可能性。



虛構示例 2

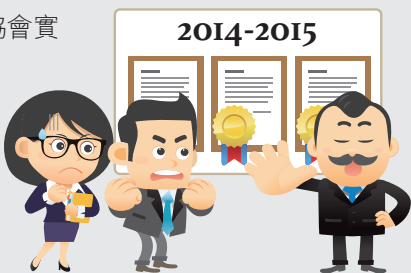
帆船業協會向會員收集並發放會員各自擬訂的未來價格資料，其中包括各特定航線的擬訂價格。該等資料不會向公眾公開，而是在協會會員進行季節性價格調整前給各會員傳閱。



競委會極為關注上述行為，該行業協會及其會員可能需要負上法律責任。上述的資料交換行為，讓帆船業經營者得以參照競爭對手擬訂的價格來調整其未來定價，因而減低了市場上的價格競爭。此交換資料的安排是一種間接合謀定價的模式。

虛構示例 3

多年來，本地一行業協會實行了一套認證制度，其會員的產品可獲得協會的「認可」。消費者亦以該認證作為選購產品時的主要考慮因素，而沒有認證的產品的需求量極小。



在最近一次只有數名主要會員出席的會議上，該行業協會決定在會籍條件中加入最低營業額的要求。新規定令許多小型會員失去會籍，其產品亦因無法再獲得認證而銷量大跌。

競委會極為關注上述行為，該行業協會及其會員可能需要負上法律責任。上述條件改變的目的似乎是為了終止較小型市場參與者的會籍。該變更可能令致一些較小型公司倒閉，而大型競爭對手亦可能因而可以提高價格。



虛構示例 4

保險業行業協會將不具約束力的汽車保險標準保單條款分發給其會員。該等條款並不涉及保單的最高保額、保費或其他價格元素。雖然很多保險公司都採用這標準條款，但每份保單均會按



個別客戶的需要而訂立，並且各有不同，這些標準條款讓消費者可以比較市場上不同的保單選擇。所有保險公司，包括潛在進入市場的新公司，均可以同樣地取得該等條款內容。



上述標準條款**不大可能**會引起競委會的關注。雖然條款涉及售予消費者的產品種類範圍，但似乎對產品選擇的影響（如有的話）有限。採用標準條款的保單仍會按個別客戶的需要而訂。此外，上述標準條款讓消費者可以就不同產品作出比較，有助他們轉換保險公司，以及有利新公司進入市場，促進競爭。

虛構示例 5



本港某製造業的公司一向透過多間專業招聘公司招聘不同類型的海外員工。HireMe Ltd 最近以一種嶄新及具創意的商業模式進入了市場。HireMe 以中介人角色，綜合不同的專業招聘公司所提供的服務，為其客戶提供「一站式服務」。

HireMe 進入市場後，一行業協會進行了一次會議，討論 HireMe 在市場所造成的影響，該協會的會員包括本港主要的專業招聘公司（但 HireMe 不是會員）。協會成員於會議上同意立即終止與 HireMe 簽訂的所有合約，並不再與其簽訂新合約，同時確保他們各自的海外分公司也這樣做。

換言之，該行業協會組織了針對 HireMe 的集體杯葛，以將 HireMe 排擠出市場。競委會極為關注此類行為，該行業協會及其會員可能需要負上法律責任。





想進一步了解競爭事務委員會如何
詮譯及執行《條例》，請到競委會
網頁 www.compcomm.hk，
參閱《條例》指引及其他引導性資料。



競爭事務委員會
COMPETITION
COMMISSION

地址： 香港灣仔皇后大道東 197 - 213 號
胡忠大廈 36 樓 3601 室
電話： +852 3462 2118
傳真： +852 2522 4997
電郵： enquiry@compcomm.hk

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The Competition Ordinance & Trade Associations



競爭事務委員會
COMPETITION
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The Competition Ordinance

promotes competition and economic growth by prohibiting anti-competitive conduct by businesses. Anti-competitive conduct includes agreements between competitors that harm competition.

Trade associations serve an important function in furthering their members' interests. They have a vital role to play in educating their members on the Competition Ordinance and promoting a pro-competitive compliance culture. Trade associations facilitate interaction between members and must themselves also be aware of their obligations under the Competition Ordinance.

Contraventions of the Competition Ordinance can lead to serious consequences for trade associations and their members.

This pamphlet provides practical tips on what trade associations should and should not do to minimise the risk of contravening the Ordinance.



Dos

1. Continue to help members understand developments relevant to their industry and promote their industry's interests to government and customers.
2. Educate members on the Competition Ordinance.
3. Establish a Competition Ordinance compliance policy for the association; appoint or nominate an officer to oversee the compliance efforts of the association.
4. Exercise care when collecting information from members and avoid facilitating the sharing of *competitively sensitive information* (see also point 6 under 'Don'ts'). Information should be handled by the staff of the association or a third party, independently from members. Information which is historic and disseminated in an aggregated, anonymised format is less likely to be problematic. [See Example 1]
5. Ensure that membership of the association is based on clear, objective and qualitative criteria; set up an appeal procedure for refusal to grant or suspension of a membership.
6. If your association certifies or awards quality labels to members to recognise that they have met certain industry standards, ensure that such certifications are based on objective and reasonable quality requirements and available to all that meet those requirements. [See Example 3]
7. If your association is involved in setting standard industry terms relating to the supply of products or services, ensure that any standard-setting process is open and that the terms do not affect the price charged to customers. The standard terms should also be non-binding and effectively accessible to members and non-members. [See Example 4]



Don'ts

1. Don't recommend or require that members set particular prices for their products or particular fees for their services.
2. Don't impose restrictions on members with regard to the other terms and conditions on which they sell their products (for example, by fixing credit terms of sale).
3. Don't help members divide up their sales territories, including by geographic areas, types of customers or types of products.
4. Don't set or recommend production targets for members.
5. Don't coordinate or facilitate collusive tendering by members.
6. Don't help members share competitively sensitive information, i.e. strategic information that a business normally doesn't want its competitors to know, with each other. Generally, information relating to the price (including future pricing intentions) and quantities of members' products or services is the most competitively sensitive. [See Example 2]
7. Don't organise or encourage a boycott by members against targeted individuals / businesses. [See Example 5]
8. Don't have rules or codes restricting or reducing competition among members, for example, imposing terms that members should not solicit employees from competitors, or rules limiting members' discount/promotional activities.
9. Don't use arbitrary rules to admit and/or expel members.
10. Don't prevent members from developing alternative standards or providing products that do not comply with the association's standards.

Hypothetical Example 1

The only five suppliers of pre-packaged fresh fruit in Hong Kong are facing considerable wastage of unsold products, as demand is unstable over seasons. To address the issue, they ask their trade association



to hire an independent market research company to collate unsold fruit data. Each week, the company publishes on its website the consolidated data so as to allow suppliers to better predict demand. Individual suppliers or the staff of the trade association are not able to identify a particular supplier's competitively sensitive data.

The trade association asks the Competition Commission if there is any problem with members exchanging information in this way.

*The Commission is **unlikely** to consider that this information exchange harms competition. The aggregated and historic nature of the information exchanged, and the fact that the information is exchanged in public makes it less likely that harmful effects will arise.*



Hypothetical Example 2

A trade association for junk owners collects from and circulates to its members information on their proposed future prices. This includes information on the proposed prices they



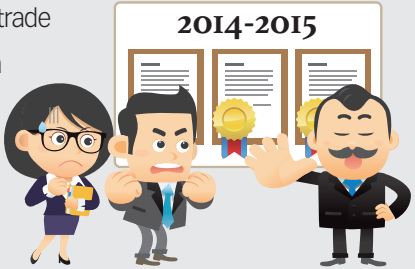
will be charging for specific journeys. The information is not made available to the public and is circulated in advance of a seasonal price review by the association members.



This arrangement would give rise to serious concerns for the Commission and liability could result for the trade association and its members. The information exchange allows the junk owners to adjust their future pricing to reflect the proposed pricing of competitors and thus reduces price competition in the market. The information exchange arrangement is an indirect form of price fixing.

Hypothetical Example 3

For many years a local trade association organised a certification scheme which “endorsed” its members’ products. Such an endorsement is a critical factor in consumers’ purchasing decisions, and products without certification have very little demand.



Recently the trade association decided to include a minimum turnover threshold in the membership requirements following a meeting which was attended only by a few large members. As a result, a number of smaller members are no longer eligible for membership and can no longer get their products “endorsed”. They lose a lot of sales.

The Commission would have significant concerns with this conduct and liability could result for the trade association and its members. The rule change seems intended to exclude smaller market participants from the trade association. The change may force some of the smaller companies out of business altogether, potentially allowing the larger competitors to raise their prices.



Hypothetical Example 4

A trade association in the insurance sector circulates non-binding standard policy terms for car insurance to members. The terms do not relate to the maximum coverage, premiums or other price elements. A large number of insurers use the standard terms, but contracts are varied and tailored to individual client needs. The standard terms have the advantage of allowing consumers to compare the various policies on offer in the market. The standard terms are accessible to all insurers on equal terms including potential new entrants.



*The Commission is **unlikely** to have concerns regarding these standard terms. Although these terms relate to the scope of the product sold to consumers, the harm to product variety, if any, appears limited. The insurance policies that adopt such standard terms are still tailored to individual customer needs. The standard terms may also encourage competition as they allow consumers to compare the various products on offer, facilitate switching between insurers and assist new companies to enter the market.*

Hypothetical Example 5



Companies active in a particular manufacturing industry in Hong Kong rely on a variety of specialist recruitment agencies to source staff from overseas. HireMe Ltd recently entered the market with a new and innovative business model. HireMe acts as an intermediary consolidating the services of the different specialist agencies, giving its clients the option of a “one-stop shop”.

After HireMe entered the market, a trade association which includes major specialist recruitment agencies in Hong Kong as members (but not HireMe) arranged a meeting to discuss the impact of HireMe in the market. During the meeting, members agreed to immediately terminate all existing contracts, and to refrain from entering into further contracts, with HireMe. They agreed to ensure that their overseas branches do likewise.

In other words, the trade association has organised a targeted boycott against HireMe, aiming at excluding HireMe from the market. The Commission would have serious concerns with this conduct and liability could result for the trade association and its members.





To learn more about how the Competition Commission interprets and enforces the Competition Ordinance, please consult our Guidelines and other guidance materials, which are available on our website www.compcomm.hk.



競爭事務委員會
COMPETITION
COMMISSION

Address : Room 3601, 36/F, Wu Chung House
197-213 Queen's Road East, Wanchai, Hong Kong
Telephone : +852 3462 2118
Fax : +852 2522 4997
Email : enquiry@compcomm.hk



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