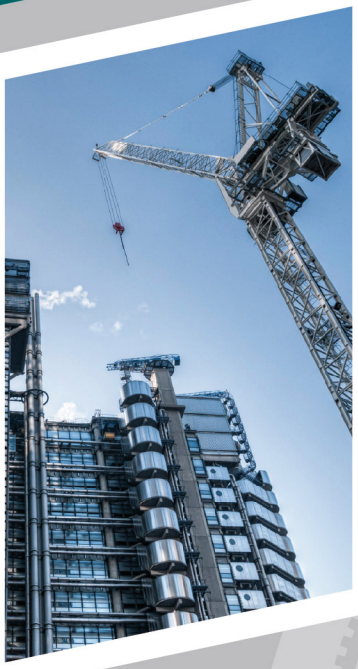
CONSTRUCTION
INDUSTRY COUNCIL
建造業議會



REFERENCE MATERIALS

COMPETITION LAW CASE ANALYSIS FOR THE CONSTRUCTION INDUSTRY

www.hkcic.org

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Disclaimer

Whilst reasonable efforts have been made to ensure the accuracy of the information contained in this publication, the CIC nevertheless would encourage readers to seek appropriate independent advice from their professional advisers where possible and readers should not treat or rely on this publication as a substitute for such professional advice for taking any relevant actions.

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Preface

The Construction Industry Council (CIC) is committed to seeking continuous improvement in all aspects of the construction industry in Hong Kong. To achieve this aim, the CIC forms Committees, Task Forces and other forums to review specific areas of work with the intention of producing Alerts, Reference Materials, Guidelines and Codes of Conduct to assist participants in the industry to strive for excellence. The CIC appreciates that some improvements and practices can be implemented immediately whilst others may take more time to adjust. It is for this reason that four separate categories of publication have been adopted, the purposes of which are as follows:

Alerts	Reminders in the form of brief leaflets produced quickly to draw the immediate attention of relevant stakeholders the need to follow some good practices or to implement some preventative measures in relation to the industry.
Reference Materials	Reference Materials for adopting standards or methodologies in such ways that are generally regarded by the industry as good practices. The CIC recommends the adoption of these Reference Materials by industry stakeholders where appropriate.
Guidelines	The CIC expects all industry participants to adopt the commendations set out in such Guidelines and to adhere to such standards or procedures therein at all times. Industry participants are expected to be able to justify any course of action that deviates from those recommendations.
Codes of Conduct	Under the Construction Industry Council Ordinance (Cap 587), the CIC is tasked to formulate codes of conduct and enforce such codes. The Codes of Conduct issued by the CIC set out the principles that all relevant industry participants should follow. The CIC may take necessary actions to ensure compliance with the Codes.

If you have attempted to follow this publication, we do encourage you to share your feedback with us. Please take a moment to fill out the Feedback Form attached to this publication in order that we can further enhance it for the benefit of all concerned. With our joint efforts, we believe our construction industry will develop further and will continue to prosper for years to come.

Purpose

The purpose of these case analyses is to provide guidance on what types of conduct may constitute breaches of Hong Kong competition law and the penalties that may be imposed. The cases were decided in jurisdictions with competition laws comparable to those in Hong Kong.

Please note that competition laws and the approach of the courts in Hong Kong may differ from that of other countries. If you are unsure whether a particular agreement or conduct is inconsistent with competition law, seek guidance from your management, designated competition manager (if any) or legal adviser.

All monetary amounts referred to in the case analyses are approximate conversions from local currency to HKD on or around 1 March 2015.

A BID-RIGGING

A1 Busan Subway Line 1 Extension (South Korea Fair Trade Commission, 10 April 2014)

Facts

Six construction companies colluded in relation to tenders for the turnkey construction of an extension of the Busan subway in South Korea. The companies agreed on which companies would win the tenders for three sections of the rail extension. Under the arrangement, three companies submitted "sham" bids (or "cover bids") that presented pre-agreed "high" prices and low-quality designs. The remaining three companies submitted pre-agreed lower prices and higher-quality designs. The values of each of the winning tenders were between HKD640 million and HKD775 million.

Decision

The contractors contravened Korean competition law, which prohibits entities from entering agreements or concerted practices to decide who will be the successful bidder. The aim of the conduct was to give the impression that there was competition for the tenders, and also to make the tenders of the pre-arranged winners look comparatively superior. This is known as "cover bidding".

Penalties

Entity	Penalty (HKD)
Company 1	35,000,000
Company 2	16,000,000
Company 3	12,000,000
Company 4	9,500,000
Company 5	8,000,000
Company 6	8,000,000

The maximum penalty under Korean competition law is 10% of the relevant entity's annual sales turnover.

Lessons Learnt

Bid-rigging

The conduct in this case involved bid-rigging and would contravene Hong Kong competition law. Undertakings should never discuss, exchange information on or agree strategy with competitors when bidding for (or considering whether or not to bid for) projects (unless they are clearly making a joint bid).

Penalty amount

The penalties imposed in this case (as with other cases referred to in these Cases Analyses) may provide guidance as to the penalties that may be imposed in Hong Kong for contravening competition law.

In Hong Kong, the maximum penalty is 10% of the turnover of the undertaking in Hong Kong for each year in which the contravention occurred, up to a maximum of 3 years. The Competition Tribunal may impose a pecuniary penalty of "any amount it considers appropriate" up to the maximum amount.

A2 ACCC v TF Woollam [2011] FCA 1216 (Australia, 2011)

Facts

Three construction contractors agreed between themselves who would win tenders for four Government construction projects in Australia. They agreed that one or more would submit a "high" bid, while one would submit a lower bid to win the tender. This conduct is called "cover pricing". The values of the winning tenders were between HKD8.4 million and HKD52 million.

Decision

The contractors contravened Australian competition law. The conduct amounted to an arrangement or understanding which had the object or effect of:

(a) giving the appearance of competition for the tenders;

(b) controlling the price at which the services would be supplied; and

(c) substantially lessening competition.

Penalties

Entity	**Penalty (HKD)**
Company 1	3,700,000
Company 2	2,800,000
Company 3	1,500,000
Managing Director	300,000
Construction Manager	185,000

The maximum penalty under Australian competition law is HKD60 million for companies and HKD3 million for individuals.

The Court took into account the following factors in determining the amounts of the penalties imposed:

(a) the need to deter similar behaviour;

(b) adverse consequences already suffered (i.e. suspensions imposed on companies by Government);

(c) the character of the contravention;

(d) the scale (size, resources and market power) of the company;

(e) the financial position of the company or individual (although the Court would not reduce the penalty on the basis that it may expose the company to liquidation);

(f) the seniority and role of the person through whom the conduct

occurred;

(g) the size of the construction projects;

(h) the commercial consequences of the conduct upon all participants affected by the conduct;

(i) whether the company or individual co-operated with the regulator;

(j) measures taken to ensure future compliance with competition law; and

(k) whether the company or individual had previously been found to have contravened competition law.

Lessons Learnt

Cover pricing

Conduct comprising "cover pricing" would constitute bid-rigging under Hong Kong competition law. The evidence in this case revealed that the practice of "cover pricing" was widespread amongst builders in the construction industry in Australia.

Formal agreement not required

A short telephone conversation between employees of a company may be enough to constitute an "arrangement or understanding" that contravenes competition law.

Penalties on individuals

Penalties may be imposed on individuals who give effect to the contravening conduct of a company.

A3 GF Tomlinson Group v Office of Fair Trading [2011] CAT 7 (United Kingdom, 2011)

Facts

103 construction companies in England engaged in cover pricing and other bid-rigging activities in relation to tenders for building projects. “Cover pricing” occurred where bidders colluded during the tender process and agreed on the price that each would bid. One or more bidders would submit an artificially high price that was not intended to win the contract. In some cases, the successful bidder would pay an agreed sum of money to the unsuccessful bidders (between HKD30,000 and HKD700,000).

Decision

The regulator determined that the cover pricing contravened United Kingdom competition law. It had the object or effect of preventing, restricting or distorting competition. The cover bids gave a false impression that a competitive bidding process was taking place.

Penalties

The regulator imposed penalties totalling HKD1.5 billion on the 103 companies. Examples of the penalties imposed are as follows:

Entity	**Penalty (HKD)**
Company 1	16,200,000
Company 2	8,200,000
Company 3	5,700,000
Company 4	5,400,000
Company 5	4,600,000
Company 6	3,800,000

The maximum penalty under United Kingdom competition law is 10% of the relevant entity’s annual global turnover.

The regulator undertook a 5-step process for determining the penalty amounts:

(a) A percentage of the undertaking’s annual turnover in the relevant product and geographical markets affected by the infringement. In this case, the starting point was 5-7% of the turnover.

(b) Adjustment for duration of infringement. In this case, no adjustment was made.

(c) Adjustment for policy considerations (e.g. need for deterrence; financial hardship).

(d) Adjustment for aggravating or mitigating factors. In this case, reductions of 5-10% were provided for companies that took efforts to ensure future compliance with competition law (e.g. by introducing a compliance programme).

(e) Adjustment to ensure that the statutory maximum of 10% of the undertaking's worldwide turnover is not exceeded.

Lessons Learnt

Focus on bid-rigging

Overseas regulators place particular focus on bid-rigging in the construction industry. In this case, the evidence disclosed bid-rigging by construction companies in relation to 4,000 tenders (with a value of about HKD34 billion). The evidence revealed that bid-rigging was widespread and many companies did not consider the conduct to be improper. It is expected that the Competition Commission in Hong Kong will have a similar focus on the construction industry.

A4 Electrical and Building Works Cartel (Competition Commission of Singapore, 4 June 2010)

Facts

14 contractors colluded when submitting bids for 10 electrical and building works projects in Singapore. Typically, the company that was interested in winning a project requested a cover bid from at least one other company. The requester would inform the supporters of his bid price so that the supporters could submit higher bids. In some instances, the requester prepared the quotations for the supporters. The aim of this conduct was to create a false impression of competition.

Decision

The companies contravened Singapore competition law through their involvement in the bid-rigging arrangements. The conduct was a serious infringement of the prohibition against anti-competitive agreements.

Penalties

Examples of the penalties imposed were as follows:

Entity	**Penalty (HKD)**
Company 1	260,000
Company 2	210,000
Company 3	180,000
Company 4	0 (Immunity due to leniency)

The maximum penalty under Singapore competition law is 10% of the turnover of the business of the undertaking in Singapore for each year of infringement, up to a maximum of 3 years.

In fixing the penalties, the regulator took into account:

(a) the financial circumstances of the companies;

(b) the number of infringements the companies were involved in; and

(c) aggravating and mitigating factors.

Lessons Learnt

<u>Bid-rigging</u>

The conduct in this case would contravene Hong Kong competition law. It would constitute bid-rigging, which is Serious Anti-competitive Conduct.

<u>Investigations</u>

The regulator in this case carried out surprise inspections at the premises of the companies involved, conducted interviews with the relevant personnel

and issued notices seeking information and documents. In Hong Kong, the Competition Commission will have similar investigation powers.

Leniency

In this case, a company reported its involvement in the bid-rigging arrangement to the regulator before any investigation commenced. The company was granted full immunity from financial penalties. In Hong Kong, the *Competition Ordinance* also allows leniency agreements. The Competition Commission may grant immunity in exchange for co-operation in an investigation or in proceedings under the Ordinance. It is not yet clear how the Competition Commission will exercise this discretion.

B PRICE FIXING

B1 National Development and Reform Commission v Jilin Yatai Group and Ors (PRC, 2014)

Facts

Three cement manufacturers held conferences to coordinate the prices of certain cement products sold in areas of Northeast China. Among other agreements, the companies agreed to sell clinker cement products at HKD370 per tonne.

Decision

The price-fixing agreements contravened the Anti-Monopoly Law of the PRC. They had the effect of restricting market competition and harming the interests of downstream sectors and customers.

Penalties

Entity	Penalty (HKD)
Company 1	74,000,000
Company 2	16,000,000
Company 3	1,200,000

The maximum penalty under Anti-Monopoly Law of the PRC is a fine up to 10% of the total revenue of the undertaking in the previous year. An undertaking may also be ordered to cease the infringing conduct and forfeit any gains resulting from the conduct.

In determining the amounts of the penalties, the regulator took into account the duration, nature and seriousness of the conduct. The regulator imposed penalties of between 1% and 2% of the total annual revenue of the companies.

Lessons Learnt

<u>Price fixing</u>

This case involved agreements between competitors to fix prices for the sale of cement products. The conduct would constitute Serious Anti-competitive Conduct under Hong Kong competition law. Undertakings should never discuss, exchange information on or agree with competitors a price to be applied for the supply or purchase of products or services.

B2 Commerce Commission v Carter Holt Harvey Ltd [2014] NZHC 531 (New Zealand, 2014)

Facts

Two suppliers of timber products for commercial construction reached an understanding that they would increase their prices to cost plus 8%. They applied the understanding when tendering for jobs in which they were the only tenderers. The conduct took place over 6 months.

Decision

The conduct contravened New Zealand competition law. It had the purpose or effect of fixing, controlling or maintaining the price for goods, and therefore had the purpose or effect of substantially lessening competition in the market.

Penalties

Entity	**Penalty (HKD)**
Company 1	10,700,000
Employee of Company 1	30,000
Company 2	0 (Immunity due to leniency)

The maximum penalties under New Zealand competition law are:

(a) for individuals, HKD2.9 million; and

(b) for companies, the greater of:

  (i) HKD58 million; and

  (ii) 3 times the value of the commercial gain from the infringing conduct or 10% of the company's annual turnover.

In determining the amounts of the penalties, the Court took into account the following factors:

(a) need for general deterrence;

(b) nature and seriousness of conduct;

(c) seniority of employees involved;

(d) duration of conduct;

(e) commercial gain from infringing conduct;

(f) market share of infringing parties;

(g) financial position of infringing parties; and

(h) comparison with similar cases.

The starting-point for the penalty was HKD16 to 18.5 million, taking into

account penalties imposed in similar cases. This was reduced by 35-40% as a result of mitigating factors (co-operation with investigation and admitting infringement).

Lessons Learnt

Penalty reductions

In this case, the infringing companies received penalty reductions for cooperating with the regulator's investigation and admitting their infringements. One company reported its participation to the regulator and was granted full immunity under the leniency policy. Depending on the approach adopted by the Competition Commission, an infringing company in Hong Kong may be able to seek penalty reductions on a similar basis.

B3 Bathroom Fittings and Fixtures Cartel (Commission of the European Communities, 23 June 2010)

Facts

17 bathroom equipment manufacturers agreed to coordinate prices for baths, sinks, taps and other bathroom fittings in 6 European countries over the course of 12 years. The coordination took place during meetings of 13 national trade associations. It consisted of fixing price increases, minimum prices and rebates, and exchanging sensitive business information.

Decision

The practices were very serious infringements of European competition law. They had the object or effect of preventing, restricting or distorting competition by fixing selling prices amongst competitors.

Penalties

The regulator imposed penalties totalling HKD5.5 billion on the 17 companies. Penalties on individual companies ranged from HKD2.2 million to HKD2.8 billion. The highest penalties were as follows:

Entity	**Penalty (HKD)**
Company 1	2,800,000,000
Company 2	620,000,000
Company 3	500,000,000
Company 4	475,000,000
Company 5	340,000,000

The maximum penalty under European competition law is 10% of the turnover of the undertaking in the preceding business year.

The penalty amount was calculated by adding together:

(a) a proportion of the value of the sales of bathroom fittings and fixtures products by the undertaking in the relevant geographic area in the last year of the infringement, multiplied by the number of years and months of the undertaking's participation in the infringement; and

(b) an additional amount, also calculated as a proportion of the value of sales, in order to deter horizontal price-fixing agreements.

In setting the fines, the regulator took into account the affected sales of the companies involved, the very serious nature of the infringement and its long duration.

The penalties of 5 undertakings were reduced by between 25 and 50% because of their likely inability to pay the penalty given their financial situation. In addition, the penalties of 2 undertakings were reduced by 30%

due to their co-operation with the regulator.

The first company to provide information on the cartel received full immunity from penalties under the European competition law leniency programme.

Lessons Learnt

Price fixing

The conduct in this case would constitute Serious Anti-competitive Conduct, being conduct that consisted of fixing, maintaining, increasing or controlling the price for the supply of goods. The conduct occurred over 12 years.

Penalty amount

Significant penalties may be imposed for engaging in price fixing and other breaches of competition law. In this case, penalties of up to HKD2.8 billion were imposed on individual companies.

B4 Belgian Architects' Association (Commission of the European Communities, 24 June 2004)

Facts

The Belgian Architects' Association published a recommended minimum fee scale for architects. The fee scale set out a method for fixing architects' fees. The fees were fixed as a set percentage of the value of the building work, by category of work and by expenditure bracket. The Association published the fee scale for more than 35 years (1967 to 2003). The majority of architects in Belgium utilised the fee scale.

Decision

The Association infringed European competition law by publishing the fee scale. The fee scale had the object and effect of restricting competition because it:

(a) enabled all architects to predict competitors' pricing policies;

(b) prompted architects to align their prices; and

(c) dissuaded architects from lowering their prices.

Penalties

Entity	Penalty (HKD)
Belgian Architects' Association	870,000

The maximum penalty under European competition law is 10% of the turnover of the undertaking in the preceding business year.

In determining the penalty amount in this case, the regulator started with a basic amount determined according to the gravity and duration of the infringement. Taking into account the gravity and duration of the infringement, the basic penalty was set at HKD40,000,000.

That amount was then adjusted to take account of any aggravating or mitigating factors. In the circumstances of the case, the regulator considered that it was appropriate to refrain from imposing a high fine and instead imposed a moderate fine.

Lessons Learnt

<u>Trade associations</u>

Trade associations must comply with competition law. If a trade association publishes a minimum fee scale for the construction industry, this may contravene the *Competition Ordinance*, even if the fee scale is stated to be a "recommendation" only. Whether this will be the case will depend on the object (i.e. the reason) for publishing such a recommendation or the actual effect on competition of doing so (as a question of fact).

C MARKET SHARING

C1 Competition Commission v Inca Concrete Products (South Africa Competition Tribunal, 10 December 2014)

Facts

A concrete manufacturer entered into agreements and/or arrangements with other concrete manufacturers as follows:

(a) The companies allocated customers of concrete and masonry products to each other. In order to sustain the arrangement, they agreed on the prices they would quote customers that belonged to the other. This conduct took place over 10 years.

(b) One company would exit the 50mm bond pavers market, and in return another company would exit the 80mm interlock market. They agreed on the prices that would be quoted to customers of the allocated products. This conduct took place over 9 years.

(c) One company would not manufacture face brick products and another would not manufacture paving bricks. This conduct took place over 14 years.

Decision

The conduct amounted to allocation of customers, division of markets and price fixing in contravention of South African competition law.

Penalties

Entity	**Penalty (HKD)**
Company	550,000

The maximum penalty under South African competition law is 10% of the company's annual turnover in South Africa and its exports from South Africa.

In this case, the penalty amount was based on a negotiated settlement. The respondent:

(a) admitted its contraventions and consented to penalties;

(b) ceased the infringing conduct and undertook to refrain from engaging in the conduct in the future;

(c) agreed to implement and monitor a competition law compliance programme; and

(d) agreed to co-operate with the regulator in its investigation and prosecution of the other respondents (including providing written and oral evidence).

Lessons Learnt

Market sharing

This case involved competitors agreeing to allocate customers and markets. This conduct would infringe Hong Kong competition law. Undertakings should never discuss, exchange information on or agree with competitors the allocation or division of sales, territories, customers, product ranges or markets for the production or supply of goods or services.

Negotiated settlement

Depending on the approach adopted by the Competition Commission, an infringing undertaking in Hong Kong may be able to explore a negotiated settlement in relation to infringing conduct by giving binding commitments (which may be enforced by the Competition Commission).

C2 Chongqing Administration for Industry and Commerce, Administrative Punishment Verdict No. 5 (PRC, 2014)

Facts

Local highway construction contractors needed a large amount of gravel for a highway building project. Four quarry operators reached an oral agreement, after a series of negotiations, to divide the supply of gravel to different sections of the highway project.

Decision

The conduct of the quarry operators had the effect of restricting competition and harming the interests of other competitors and the gravel purchasers. Therefore, it was a violation of the PRC Anti-Monopoly Law of the PRC, which prohibits allocation of sales markets and other forms of monopoly agreements.

Penalties

Entity	Penalty (HKD)
Individual 1	248,000
Individual 2	112,000
Individual 3	87,000
Individual 4	50,000

Lessons Learnt

Penalties on individuals

Penalties were imposed on the owners of the businesses that engaged in the infringing conduct. This demonstrates that company owners may be penalised, and not just the companies themselves.

C3 Premixed Concrete Manufacturer Cartel (PRC, 2011)

Facts

A construction trade association facilitated the coordination of 16 members (who were premixed concrete manufacturers) to enter into an agreement. Under the agreement:

(a) market shares were allocated to each of the manufacturers according to their capacities;

(b) the market in a Chinese city was divided between the manufacturers;

(c) the manufacturers were to file their concrete sales agreements with the Association; and

(d) manufacturers that did not cooperate would be fined by the Association.

The Association governed and enforced the agreement. A construction enterprise filed a complaint against the Association, alleging that several construction projects had to be suspended because there wasn't sufficient supply of premixed concrete. The construction enterprise alleged that the Association prohibited its members from entering into sales agreements with downstream entities, without first seeking the Association's approval.

Decision

The Association violated the PRC Anti-Monopoly Law by organising the competing concrete manufacturers to enter into the agreement. The manufacturers who implemented the agreement also violated the law. The conduct restricted competition in the premixed concrete industry.

Penalties

Entity	**Penalty (HKD)**
Association	250,000
Companies	Not specified

The Association and manufacturers were ordered to cease the infringing conduct. The fines imposed on the manufacturers were not publicly disclosed. It was noted that the manufacturers had cooperated in the regulator's investigation.

Lessons Learnt

<u>Trade associations</u>

In this case, both the trade association and its members were penalised. This indicates that both the "facilitators" and "implementers" of anti-competitive agreements may be punished under competition law.

C4 Elevators and Escalators Cartel (European General Court, 2011)

Facts

Four suppliers of elevators and escalators operated a cartel for the installation and maintenance of elevators and escalators in four European countries over nine years.

The companies agreed:

(a) to share elevator and escalator sales, installations and maintenance contracts;

(b) on the allocation of public and private tenders; and

(c) not to supply products to each other's customers.

The companies coordinated their tender bids according to their pre-agreed cartel quotas. Fake bids, too high to be accepted, were lodged by the companies who were not supposed to win the tender, in order to give the impression of genuine competition.

The projects involved included hospitals, railway stations, shopping centres and commercial buildings. The construction and maintenance costs of buildings were artificially increased. The effects of the cartel would continue for 20 to 50 years as a result of long-duration maintenance contracts.

Decision

The conduct contravened European competition law. It constituted an agreement between undertakings that had the object or effect of preventing, restricting or distorting competition.

Penalties

Entity	**Penalty (HKD)**
Company 1	2,780,000,000
Company 2	1,950,000,000
Company 3	1,240,000,000
Company 4	1,230,000,000

The maximum penalty under European competition law is 10% of the turnover of the undertaking in the preceding business year.

The penalties took account of the size of the markets for the products, the duration of the cartels and the size of the firms involved. The infringements were deemed to be very serious.

The companies received different penalties based on the relative importance of the company in the relevant market (taking into account the annual turnovers of each company).

Lessons Learnt

Market sharing

The conduct in this case would constitute Serious Anti-competitive Conduct, being conduct that consisted of allocating sales, territories, customers or markets for the production or supply of goods.

Penalty amount

This case demonstrates the significant penalties that may be imposed for engaging in market sharing. Fines of up to HKD2.78 billion were imposed.

Two companies received full immunity from fines in respect of the cartels in three European countries, as they were first to provide information about the cartels. The penalties on all undertakings were reduced by 1% for not contesting the facts.

D OUTPUT LIMITATION

D1 Reinforcing Bars Cartel (European Commission, 8 December 2009)

Facts

Eight producers of concrete reinforcing bars, a product used in the construction industry, colluded on reducing the quantities of reinforcing bars on the market in Italy. The companies also agreed on the prices that would be charged for the products. The purpose of the conduct was to increase the price of the products in Italy. The conduct took place over the course of 10.5 years.

Decision

The conduct contravened European competition law. It had the object or effect of limiting or controlling the output or sales on the Italian market for concrete reinforcing bars. It also had the object or effect of fixing prices.

Penalties

The regulator imposed penalties totalling HKD720 million on the 8 undertakings. Penalties on individual companies ranged from HKD9.4 million to HKD233 million. The highest penalties were as follows:

Entity	**Penalty (HKD)**
Company 1	233,000,000
Company 2	124,000,000
Company 3	89,000,000
Company 4	89,000,000

The maximum penalty under European competition law is 10% of the turnover in the preceding business year of the undertaking.

The companies received different penalties based on the annual turnover of each company. The basic amount of the penalties was increased by 105% because the infringement lasted for 10.5 years.

Lessons Learnt

<u>Output limitation</u>

The conduct in this case would contravene Hong Kong competition law. Undertakings should never discuss, exchange information on or agree with competitors the fixing, maintaining, controlling, preventing, limiting or eliminating of the production or supply of goods or services (including restricting the volume or type of particular goods or services).

E GROUP BOYCOTTS

E1 Eden Brown Ltd and Ors v Office of Fair Trading [2011] CAT 8 (United Kingdom, 2011)

Facts

Six construction recruitment firms formed a group called the "Construction Recruitment Forum". The group agreed to boycott another company, Parc UK, when supplying candidates to construction companies. Parc was seeking to enter the construction recruitment market as an intermediary between the recruitment sector and construction firms. The group also agreed to fix the fee rates they would charge to construction companies.

Decision

The conduct breached United Kingdom competition law. The recruitment firms had colluded to boycott a potential rival rather than competing fairly.

Penalties

Entity	**Penalty (HKD)**
Company 1	71,000,000
Company 2	18,000,000
Company 3	13,000,000

The maximum penalty under United Kingdom law is 10% of the turnover of the undertaking.

The penalties imposed on 2 companies were reduced by 5% due to the companies taking active measures to introduce competition law compliance measures.

Lessons Learnt

Group boycott

The conduct in this case would contravene the First Conduct Rule under the *Competition Ordinance*. Undertakings should never discuss or arrange boycotts of competitors, customers or suppliers.

Penalty amount

Undertakings found to have infringed competition law in Hong Kong may seek to reduce any penalties imposed by demonstrating that active measures have been taken to introduce compliance measures.

F SEARCH AND ENTRY WARRANTS

F1 Obstruction of on-site inspection (Greek Competition Commission, 17 May 2013)

Facts

The Greek Competition Commission conducted an on-site inspection for suspected infringements of Greek competition law by two companies active in the construction and concrete production sectors. During the inspection, a large number of electronic files were remotely deleted from the computer of one employee. This was confirmed by a forensics expert.

Decision

The undertakings contravened Greek competition law by obstructing the investigation. They had an obligation to fully subject to the investigation and to actively co-operate with the officials during the inspections to disclose all documents relevant to the investigation.

Penalties

Entity	Penalty (HKD)
Company 1	310,000
Company 2	310,000

The maximum penalty under Greek competition law for obstructing an investigation is 1% of the entity's turnover for the previous year. In determining the penalty amount in this case, the regulator took into account:

(a) the severity and impact of the conduct; and

(b) the need to ensure a general and specific preventive effect.

The fine was reduced by 10% on the basis of the co-operation demonstrated by the undertakings during the proceeding.

Lessons Learnt

Offences

Under the *Competition Ordinance*, it is an offence to: (a) obstruct a person executing a search and entry warrant; or (b) destroy or falsify documents. The offences are punishable by a fine of up to HKD1 million and to imprisonment for up to 2 years.

To the extent required by law, undertakings must co-operate with persons executing search and entry warrants. Undertakings must not attempt to destroy any documents which the undertaking is required to produce pursuant to a notice or warrant.

F2 Obstruction of on-site inspection (Competition Council of the Republic of Lithuania, 17 July 2013)

Facts

The Lithuanian Competition Council conducted an inspection at the premises of a construction company. During the inspection, an employee left the premises for several minutes with a document that had been requested by the inspectors. The inspectors had warned the employee not to leave the premises with the document.

Decision

The conduct amounted to an obstruction of the inspection in contravention of Lithuanian competition law. The conduct gave rise to the risk that the document could have been damaged or amended.

Penalty

Entity	**Penalty (HKD)**
Company	1,500,000

The maximum penalty under Lithuanian competition law for obstructing an investigation is 1% of the entity's annual turnover.

Lessons Learnt

Offences

It is likely that the conduct in this case would constitute the obstruction of a search and entry warrant, and would therefore be an offence under the *Competition Ordinance*.

CONSTRUCTION INDUSTRY COUNCIL
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Feedback Form

Reference Materials – Competition Law Case Analysis for the Construction Industry

Thank you for reading this publication. To improve our future editions, we would be grateful to have your comments.

(Please put a "✓" in the appropriate box.)

1. As a whole, I feel that the publication is:	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Informative	❑	❑	❑	❑	❑
Comprehensive	❑	❑	❑	❑	❑
Useful	❑	❑	❑	❑	❑
Practical	❑	❑	❑	❑	❑

2. Does the publication enable you to understand more about the Competition Law for the construction industry?	Yes	No	No Comment
	❑	❑	❑
3. Have you made reference to the publication in your work?	Quite Often	Sometimes	Never
	❑	❑	❑
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	❑	❑	❑

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