

FOSTERING COMPETITION AND A FAIR MARKETPLACE

促進市場競爭和公平交易



The Council undertakes researches and studies on various aspects of market behaviour to advocate fair competition and ensure best practice in the marketplace. Responsible trade practices and a level-playing field are conducive to ensuring better prices, increased choices and higher quality of products and services, which are all desired effects of consumer satisfaction and economic efficiency.

本會就不同的市場行為進行研究，以倡議公平競爭及確保最佳營商手法。負責任的營商手法和公平的營商環境可以為消費者帶來更相宜的價格、更多的選擇，以及更優質的產品和服務，令消費更稱心滿意及提升經濟效益。

During the year, the Council advised the Government and the trade on various matters by way of in-depth studies regarding competition and trade practices in different sectors, as well as through consultation submissions¹¹.

Ensuring Competition Safeguards in the Marketplace

To foster a fair and transparent marketplace is one of the Council's functions, so the Council has been working closely with the Competition Commission (the Commission) pertaining to competition issues across different industry practices.

Leniency Policy for Undertakings Engaged in Cartel Conduct

The Council submitted its views concerning the Draft Leniency Policy for Undertakings Engaged in Cartel Conduct released by the Commission. A well-designed and well-managed leniency policy contributes to effective enforcement against cartel activity and a penalty waiver provides an incentive to cartel participants to provide information to the Commission.

In the proposed policy put forward by the Commission, the full waiver of pecuniary penalty is available to the first applicant only, so as to provide a strong incentive for a cartel participant to be the first to disclose information about the cartel and activities, but the policy may have the unwanted effect of discouraging any other participants from coming

年內，本會就不同議題進行深入研究，包括不同行業的競爭及營商手法，向政府及業界提供意見，並就各政策諮詢作出回應¹¹。

保障市場競爭的措施

本會的其中一個職能，就是促進一個公平且透明的市場。因此，本會一直與競爭事務委員會（競委會）就不同行業出現的競爭問題保持緊密合作。

為從事合謀反競爭行為之業務實體而設的寬待政策

本會就競委會的《從事合謀反競爭行為之業務實體而設的草擬寬待政策》提供意見。一套設計良好和管理妥善的寬待政策，能就合謀作為反競爭行為予以執法，本會同意免除對合謀行為參與者的刑罰是誘因，使參與者提供資料予競委會。

競委會提議只完全免除對首個成功申請人的刑罰，以提供具效力的誘因予合謀行為參與者角逐成為最先的申請人，然而，此政策可能會造成不鼓勵其他參與者申請的不良後果。其他合謀行為

¹¹ See Appendix 9 for the list of submissions during the year. 本年度提交的意見書一覽表見附錄九。

forward. The fear of detection may induce other cartel members to destroy evidence to counteract the adverse effect of the information provided by the first discloser. The Council suggests offering tiered rewards for second and third members of the cartel who offer information, say up to 50% and 30% penalty reduction, respectively, as is practiced in other jurisdictions. This will ensure the Commission can obtain quality information and corroborating evidence from multiple participants of a cartel network, instead of relying on the information and evidence of only one.

Block Exemption Application Regarding Liner Shipping Agreements

The Council put forward its view on the block exemption application for certain agreements, including Vessel Sharing Agreements (VSAs) and Voluntary Discussion Agreements (VDAs), submitted to the Commission by the Hong Kong Liner Shipping Association (HKLSA). VSAs refer to capacity sharing and VDAs relate to charges, both are determined and imposed by competing liner members of collective groups of shipping lines and could be construed as cartel conduct. The Council has a concern with any exemption that might be given to the HKLSA, given the effect that any market distortion could have on consumer welfare through increased costs for Hong Kong businesses that could then be passed on to consumers. Close scrutiny is essential in order to safeguard against any anti-competitive effects of shipping liner agreements on markets, shippers and consumers.

The Council recommended the Commission to reference the development and experience of block exemption regimes in Europe and other jurisdictions where the competition regulatory model is similar to that of Hong Kong, and to conduct detailed analysis into the effect of the block exemption decision on different liner carrier markets. This analysis should focus on performance, average revenue, rate volatility, market concentration and market share stability. Without solid evidence from overseas studies and quantitative evidence to demonstrate economic benefits generated from the agreements, the Council suggested the Commission take a precautionary approach and not to grant an exemption.

Discussion Forum on Competition in Electricity Markets

To advocate the value of promoting competition in the electricity sector, a discussion forum on Competition in Electricity Markets was co-organised by the Commission and the Council to explain respective positions on the issue and provide a platform for sharing of insights and experiences from local and overseas experts. The forum explored how in future Hong Kong's electricity market could be opened up to renewables and tri-generation service providers as well as how experiences of market liberalisation in Mainland China and Singapore could be relevant. The forum was attended by around 100 participants and facilitated fruitful and interactive discussions on the topic.



的參與者會因擔憂被查出而毀滅證據，因而抵消首位告密者提供資料的效用。本會建議給予第二及第三申請人階梯式獎勵，如參照其他管轄區域做法，分別減低五成及三成的刑罰。由此，競委會不用單單依賴一個告密者，而可從合謀行為參與者的網絡中獲得不同申請人有用的資料和確鑿證據。

若干定期班輪協議提出的集體豁免命令申請

本會提交有關集體豁免命令申請的意見，包括由香港定期班輪協會對競委會所提出有關《船舶共用協議》，及《自願討論協議》的集體豁免命令申請。《船舶共用協議》指規範船舶間的供應共享，而《自願討論協議》則為互相競逐的班輪航線協議會員集體制訂有關收費，某些協議可被視為合謀反競爭行為。本會關注若果香港定期班輪協會獲得任何豁免，會導致市場扭曲，令香港商業成本上升轉嫁至消費者，影響其福祉。因此，密切監察至關重要，以防止定期班輪協議對市場、託運公司及消費者的反競爭後果。

本會建議競委會參考歐洲在集體豁免的體制發展和經驗，以及其他與香港採用相似的競爭監管體制模式，並就不同班輪種類的市場，對於其表現、平均收入、收費波動、市場集中度及市場佔有穩定性幾方面進行詳盡分析，作出集體豁免決定。在缺乏海外研究的具體證據，以及有關協議所產生經濟效益數據的情況下，本會建議競委會應採取謹慎態度，不予以豁免。

電力市場競爭論壇

為提倡促進電力市場競爭的價值，競委會與本會合辦了一場電力市場競爭論壇，以闡述彼此對於此題目的立場及提供平台讓本地和外國專家分享見解和經驗。論壇中討論了香港電力市場未來如何開放予可再生能源和三聯產服務供應商，以及如何從中國和新加坡汲取開放市場的經驗。論壇吸引了約100位嘉賓參與，並就此議題展開了豐富而互動的討論。



Improving Market Regulation

Mandatory Provident Fund Schemes (Amendment) Bill

Further to its previous submission in response to a consultation paper on Providing Better Investment Solutions for MPF Members, which proposed introducing a core fund, the Council expressed its reservation about the “opt-out arrangement” under the Default Investment Strategy (DIS) proposal in the Amendment Bill.

The Council considered that it was not beneficial for consumers to make the transition to an “opt-out arrangement” as this could incur potential loss to concerned scheme members. On the contrary, the Council opined that an “opt-in approach” would avoid possible disputes and legal proceedings arising from the transfer of accrued benefits (especially if they incur financial loss) to the DIS without express investment instructions from scheme members. The Council also recommended that the proposed 42-day reply period when the change takes effect should be extended, and that public education prior to the implementation of the DIS would be crucial.

Review of the Environmental, Social and Governance Reporting Guide (ESG Guide)

The Council gave comments on the Review of the ESG Guide issued by the Hong Kong Exchanges and Clearing Limited (HKEx). Whilst supporting the HKEx’s proposals to amend the Main Board Listing Rules to require issuers to disclose ESG information on an annual basis and upgrade certain parts of the ESG Guide (e.g. key performance indicators (KPIs) under the subject area “Environment”) to “comply or explain”, the Council considered it crucial for HKEx to draw up a list of explanations in the new ESG Guide and require issuers to provide the applicable explanation in case of deviations from the “comply or explain” provisions.

Given the importance of product safety in the protection of consumers’ interests, the Council also suggested HKEx to upgrade and include more KPIs under the aspects “Supply Chain Management” and “Product Responsibility”. The Council further recommended that HKEx set a timetable to review and monitor the compliance levels of issuers after implementation of the new ESG Guide and a plan for upgrading all KPIs in the ESG Guide.

Financial Institutions (Resolution) Bill

In its submission to the Legislative Council Bills Committee, the Council supported the legislative proposals as set out in the Financial Institutions (Resolution) Bill which incorporated the suggestions in the Council’s submissions, such as the introduction of a review mechanism by providing the Financial Secretary with the power to designate financial institutions (FI), both regulated and unregulated, as being within scope; the protection of client assets as part of the resolution objectives; and the establishment of a lead resolution authority for FIs in different sectors of the financial system.

To enhance public confidence in the regime, the Council further suggested a regular and on-going review of the scope of the resolution regime and disclosure of any change in the scope. The Council also considered it important for the lead resolution authority of a cross-sector FI to coordinate effectively and efficiently and be consistent in securing the resolution objectives, and was of the view that any resolution costs should be included in the resolution package to be considered by the lead resolution authority.

改善市場規管

強制性公積金計劃（修訂）條例草案

繼早前就「為強積金成員提供更佳投資方案」諮詢文件有關引進核心基金提交意見書後，本會進一步表達對修訂條例草案內擬議的預設投資策略下有關於「選擇退出」的安排有所保留。

本會認為以「選擇退出」形式作為過渡安排不利消費者，因為這會為相關的計劃成員造成潛在損失。相反，本會認為「選擇加入」形式，可避免將沒有作出投資指示的計劃成員的累算權益轉換至預設投資策略時出現的潛在爭議及法律訴訟（尤其是如涉及經濟損失）。另外，本會建議應把擬議的42日回覆期延長，更重要的是在預設投資策略實施前進行公眾教育。

檢討《環境、社會及管治報告指引》

本會就香港交易及結算所有限公司（香港交易所）進行的《環境、社會及管治報告指引》（《指引》）檢討提供意見。本會支持香港交易所的建議，包括修訂上市規則，規定發行人須每年匯報環境、社會及管治資料，及把《指引》內部分範疇（例如在「環境」範疇下的關鍵績效指標）提升為「不遵守就解釋」。另外，本會認為至關重要的是香港交易所應於新《指引》中制訂一系列理由，並要求發行人在偏離「不遵守就解釋」的條文時，必須提供適用的理由。

鑒於產品安全對維護消費者權益至為重要，本會建議香港交易所於《指引》有關「供應鏈管理」及「產品責任」範疇中提升及增加更多關鍵績效指標。此外，本會建議在實施新《指引》後，香港交易所應訂立時間表檢討及監察發行人的遵守情況，以及制訂計劃，提升《指引》中的所有關鍵績效指標。

《金融機構（處置機制）條例草案》 -

在提交立法會《金融機構（處置機制）條例草案》法案委員會的意見書中，本會支持條例草案提出的立法建議，當中亦有包含本會早前提出的意見書中的建議，包括引入一個檢討機制，賦予財政司司長權力，把本不屬處置機制涵蓋範圍之內的金融機構納入機制之內；把保障客戶資產訂為處置目標之一；以及訂立處置機制當局，以協調跨界金融機構的處置規劃以至處置行動。

為加強公眾對機制的信心，本會進一步建議，包括定期檢討機制的涵蓋範圍及披露當中的任何改變。本會亦認為處置機制當局須有成效、有效率地處理跨境金融機構的處置行動；確保處置目標的一致性；以及相關的處置成本和費用應在處置方案中一併考慮。 -

Enhancing Information Transparency and Accuracy

Air Passenger Departure Tax (APDT)

The Council initiated a study into the APDT refund arrangements of airlines in Hong Kong. Of 24 surveyed airlines, three budget airlines' responses stated explicitly that an administration fee would be imposed on passengers applying for APDT refund which the Council deemed inappropriate under current regulation. As for the remaining 21 airlines, even though some responded that no administration fee would be charged, the Council found wordings such as "a reasonable administration fee will be charged" on their websites, which can create confusion for consumers making their refund applications.

Furthermore, it was found that 14 of the surveyed airlines required passengers to take action and file refund applications through designated channels, failing which the APDT would not be refunded. The Council was highly concerned about how airlines handle the unclaimed APDT, in addition to the substantial differences in the time limits and processing times for APDT refund applications among different airlines.

In response to the Council's study findings and recommendations, the Civil Aviation Department (CAD) issued letters to airlines reminding them of the statutory requirements relating to free APDT refund. The CAD would also work with the industry to draft clear guidelines for free APDT refund and appropriate procedures for handling unclaimed refunds.

Tracking of Retail Prices of Auto-Fuels

As part of an on-going project commissioned by the Environment Bureau, the Council is tasked to collate and publish up-to-date retail prices of auto-fuels on its website and via two smartphone applications for car drivers. Apart from pump prices, the Council also provides information on the latest promotional offers and other relevant information from the fuel companies for the purpose of enhancing price transparency in the marketplace and enabling consumers to make informed choices.

Regarding allegations and complaints about fuel companies' pricing tactics such as "quick going up, slow coming down" and "more going up, less coming down", the Council will continue its price monitoring role and conduct further analysis on auto-fuel retail price movements and trends in Hong Kong.

提升資訊透明度及準確性

飛機乘客離境稅（離境稅）

本會研究本地航空公司退還飛機乘客離境稅（離境稅）的安排。在調查的24間航空公司當中，3間廉航明確表示會向乘客收取離境稅退款手續費。然而，本會認為根據現時法例規定，有關做法並不恰當。至於其他航空公司雖然表示不會向乘客收取相關手續費，但本會發現部分航空公司在其網頁上附有「須支付合理手續費」的條款細項，或令乘客在申請退回離境稅時感到混淆。



另一方面，調查亦發現有14間航空公司要求乘客必須主動以指定的渠道申請退回離境稅，否則不會安排退稅。本會高度關注航空公司如何處理未有退還的離境稅款項，以及在訂定乘客申請退稅期限及處理退稅的時間上的重大差異。

因應本會的調查結果及建議，民航處已去信各航空公司，提醒他們有關免收費退還離境稅的法例規定。此外，民航處亦會與航空業界攜手合作，就航空公司退還離境稅制訂清晰指引，以及就未有申領的退還稅項，訂定相關的處理程序。

車用燃油零售價監察分析

本會受環境局委託，收集市場上車用燃油價格的最新資訊，並透過本會網站及兩個智能手機應用程式向駕駛者發放有關信息。除了車用燃油的牌價外，本會亦向公眾提供每間油公司的最新優惠以及相關資訊，務求增加市場的價格透明度，協助消費者在入油時作出合適的選擇。

就公眾認為油公司涉嫌「加快、減慢」及「加多、減少」等定價行為的指控及投訴，本會會繼續密切監察車用燃油價格的變動，並進一步分析研究本港車用燃油零售價格的變動和趨勢。



Strengthening Consumer Protection

Voluntary Health Insurance Scheme (VHIS)

In response to the consultation paper on VHIS, the Council welcomed and supported the Food and Health Bureau's proposal of essential protection of consumers by means of regulating healthcare insurance plans, and highlighted several suggestions related to the minimum requirements, including increasing the surgical limit in the benefit schedule, devising a mechanism to relieve borderline case individuals from the high-risk pool, extending the window period relating to migration of policies from one year to three years, portability with no re-underwriting, and making it mandatory for hospitals to provide inclusive packaged pricing for common treatments and procedures and disclose claims records.

The Council also commented that the impartiality of the new regulatory agency under the VHIS mechanism should be clarified and that the agency should be mandated to handle sales-related complaints.

Promoting Good Business Practices

Development of Industry Code of Practices

In order to promote self-regulation across various business and professional associations, the Council has been collaborating with different industries to develop relevant codes of practice.

Following the release of the Code of Practice of the Laundry Industry (the Code) in July 2015, the Council worked with the Laundry Association of Hong Kong (LAHK) on the establishment of an independent Complaints Review Committee comprised of prominent personages and Legislative Council Members from outside the industry to handle consumer complaints. The Council and LAHK commit to periodic review of the Code, levels of compliance among industry operators as well as the effectiveness of the Complaints Review Committee.



加強消費者保障

自願醫保計劃

在回應「自願醫保計劃」諮詢文件中，本會歡迎及支持食物及衛生局建議透過規管醫療保險計劃，向消費者提供基本保障，並提出對計劃最低要求的幾項意見，包括建議增加保險賠償表內手術上限的保障限額，為被撥入高風險池的邊緣人士制訂離開機制，將推行計劃的空窗期安排由1年延長至3年，保單「自由行」豁免重新核保，以及強制醫院就常見手術和程序提供套餐式報價及披露索償記錄。

本會同時建議在自願醫保機制下成立的新規管機構，必須釐清其中立性，且其職能須包括處理與銷售有關的投訴。

推廣良好的營商手法

發展行業營商實務守則

本會一直致力推動各商業及專業團體制訂行業的自我規管機制，並協助各行各業訂立實務守則。

2015年7月推出《洗衣業營商實務守則》(《守則》)後，本會與香港洗衣商會(洗衣商會)一同制訂成立獨立投訴審查委員會事宜。該委員會由社會賢達和立法會議員等非業界人士組成，以處理與洗衣業相關的消費者投訴。與此同時，本會和洗衣商會亦會定期檢視《守則》的內容、行業營商者遵循《守則》的情況，以及投訴審查委員會的成效。