

LCQ13: Anti-competitive conduct

Following is a written reply by the acting Secretary for Commerce and Economic Development, Mr Gregory So, to a question by the Hon Emily Lau in the Legislative Council today (November 19):

Question:

It has been reported that in recent years, large supermarket chains ("supermarkets") have allegedly acted in collusion to make use of their dominant market positions to manipulate retail prices of goods. Moreover, the high prices of goods in supermarkets have also aroused public concern. The Competition Policy Advisory Group ("COMPAG") had also received complaints about the anti-competitive conduct of supermarkets. In this connection, will the Executive Authorities inform this Council:

(a) of the total number of complaints received by COMPAG over the past three years about the anti-competitive conduct of supermarkets and, among such complaints, the number of those which had been substantiated;

(b) as COMPAG pointed out in its 2006-2007 report that in May 2006, some rice traders had complained that supermarkets sold rice below cost, but the then Commerce, Industry and Technology Bureau ("CITB") found no conclusive evidence of anti-competitive conduct on the part of supermarkets, whether CITB had investigated at that time if the suppliers concerned had provided rice to various supermarkets and other retailers at the same prices; if it had, of the investigation details; if not, the reasons for that;

(c) as COMPAG also pointed out in the above report that in August 2006, a supplier had complained against a supermarket for unilaterally raising the retail price of the supplier's products above an agreed level, and the then CITB had commissioned the Consumer Council ("CC") to follow up, and COMPAG would review CC's findings within 2007, of the details of those findings; and

(d) as COMPAG pointed out in its response to the findings and recommendations of CC's Report on Competition in the Foodstuffs and Household Necessities Retailing Sector released in August 2003 that "the issue at stake was not the lack of competition but the competitiveness of various suppliers and customer choice", but large supermarkets in fact enjoy a market share as high as 70%, whether the authorities have studied if this situation will make it difficult for other operators to enter the

market, resulting in large supermarkets being able to manipulate the prices of goods; if they have, of the details of the study?

Reply:

President,

(a) In the past three years, COMPAG has received two complaints of anti-competitive conduct by supermarkets. The Administration found no conclusive evidence of the conduct alleged in the complaints.

(b) In a free market, rice suppliers may sell rice to buyers at different prices. This does not necessarily mean that anti-competitive conduct is involved. As neither CITB nor COMPAG have investigative powers to follow up on complaints and given that the information on the prices set by rice suppliers when selling to supermarkets and other retailers is commercially sensitive, we did not gather this information.

(c) The Consumer Council has completed the investigation and the relevant findings were set out in the recently published COMPAG 2007-2008 Annual Report. The Council examined the complaint with reference to its previous studies on the supermarket sector, relevant overseas experience and the guidelines set out in the Government's Statement on Competition Policy. However, the Council could not assess the complaint in detail due to the limited information provided by the supplier. In addition, as the complainant requested that his identity not be disclosed, the Council was unable to approach the supermarket concerned to verify the allegations made by the complainant. According to the information gathered by the Council, there was no prima facie evidence that the supermarket had created barriers to stop the complainant from supplying products to other retailers, or was engaged in conduct that would substantially lessen competition. Therefore, the Council could not conclude that the supermarket's behaviour constituted anti-competitive conduct.

(d) In a small economy like Hong Kong, the scope for a larger number of firms to provide certain products or services may be limited. It is therefore not uncommon for oligopolies to exist in certain markets. However, this does not mean that anti-competitive conduct will necessarily occur. By the same token, the fact that a large supermarket has a high market share does not necessarily mean that it is difficult for other operators to enter the market, thereby allowing the large supermarket to manipulate the prices of goods.

The question of whether a company has abused its substantial market power or engaged in anti-competitive conduct (for example price-fixing)

can only be determined after investigation. Under the proposed competition law, the independent Competition Commission would be able to initiate an investigation as long as it had reasonable cause to believe that anti-competitive conduct had taken place in a market. If it could prove that anti-competitive conduct had occurred, the Commission or the Competition Tribunal could then apply appropriate remedies, including fines and the issue of "cease and desist" orders.

Ends/Wednesday, November 19, 2008