

LCQ2:Competition Policy Advisory Group

Following is the question by the Hon Ronny Tong and a written reply by the Secretary for Economic Development and Labour, Mr Stephen Ip, in the Legislative Council today (October 26):

Question:

In March last year, the Competition Policy Advisory Group (COMPAG) wrote to invite academics of local tertiary institutions to submit proposals on a consultancy study which aimed at examining the impact on the competition situation of the large real estate developers' practices of using the housing estates they build as platforms for expanding their cross-sector businesses. COMPAG has not yet released the findings of the study, nor reported on its progress. In this connection, will the Government inform this Council:

(a) whether the study has been completed;

(i) if so, of the findings of the study; the reasons for COMPAG not releasing them nor reporting on the relevant details in its report; how the Administration follows up the findings; and

(ii) if not, the reasons for that; the current progress of the study, the expected time of its completion and the release of its findings; and

(b) if the study has never been conducted or was terminated, of the reasons for that?

Reply:

Madam President,

In March 2004, the Competition Policy Advisory Group (COMPAG) invited eight local tertiary institutions to submit proposals for a consultancy study on the competition aspects of some real estate developers which are concurrently engaged in other businesses such as estate management and telecommunications, and making use of their housing developments as platforms to expand their businesses in these sectors. In the event, only one bid was received but it did not meet the selection criteria.

COMPAG noted then that the Office of the Telecommunications Authority (OFTA) was looking into the Banyan Garden case which involved complaints against, inter alia, subsidiary companies of a developer providing building management and telecommunications services in a housing development of the developer. COMPAG therefore decided to review the need for the consultancy study after OFTA had concluded its investigation of the Banyan Garden case.

OFTA completed its investigation in August 2004. Having considered the OFTA's report, COMPAG was of the view that the issues identified in the Banyan Garden case concerned the availability of advance, comprehensive and comprehensible information on the types of services included in the management fee prior to the sale or occupation of the building. COMPAG concluded that where building management services are provided by the real estate developer or management company before an Owners' Corporation could be formed, the real estate developer or management company should not enter into excessively long service contracts to deprive owners of the option to vary the choice of service later, and that tenders should be competitive, open and transparent. COMPAG also noted that the Deed of Mutual Covenant and the Building Management Ordinance already provide a mechanism for the Owners' Corporation to be actively involved in the procurement process to ensure that the procurements by the building manager are made in a fair and transparent manner.

As regards the practice of some real estate developers making use of their housing developments as platforms for expanding other businesses, COMPAG reckoned that exploring new business opportunities, developing new markets and diversifying into other business areas are common commercial practices. COMPAG also noted that major economies, including the United States, the European Union (EU) and Australia, do not regulate or restrict enterprises expanding into other businesses. These places only have provisions in their competition laws against anti-competitive practices or agreements that would seriously affect the operation of the relevant sector or market. Whether the enterprises have cross-sector businesses is not a factor for consideration. In the case of the EU, its competition law prohibits anti-competitive agreements and abuse of dominant market position. This notwithstanding, the provisions prohibiting anti-competitive agreements do not apply to intra-group agreements (such as leases between a subsidiary and its parent company). And, in determining whether a company with dominant market position has abused its position, the company's engagement in cross-sector business activities

is not a factor for consideration.

In view of the OFTA's report on the Banyan Garden case, the stance of major economies on cross-sector business, and the response to the invitation for consultancy proposal in March 2004, COMPAG decided not to conduct the consultancy study.

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