

# Fostering Competition And A Fair Marketplace

## 促進市場競爭和公平交易



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

消委會就市場行為的不同方面進行研究，以倡議公平競爭及良好營商手法。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，以及更高質素的产品和服務，從而讓消費者稱心滿意及達致經濟效益。

### Topical Issues of Competition and Trade Practices

During the year, the Council advised the government on various matters by way of in-depth research and studies regarding competition and trade practices in sectors including supermarkets, electricity and telecommunications.<sup>11</sup> The study concerning the grocery market, which was issued in the wake of the establishment of the Competition Commission, called for further investigation by the regulatory body on alleged unfair trade practices within this sector.

### Competition within the Grocery Market

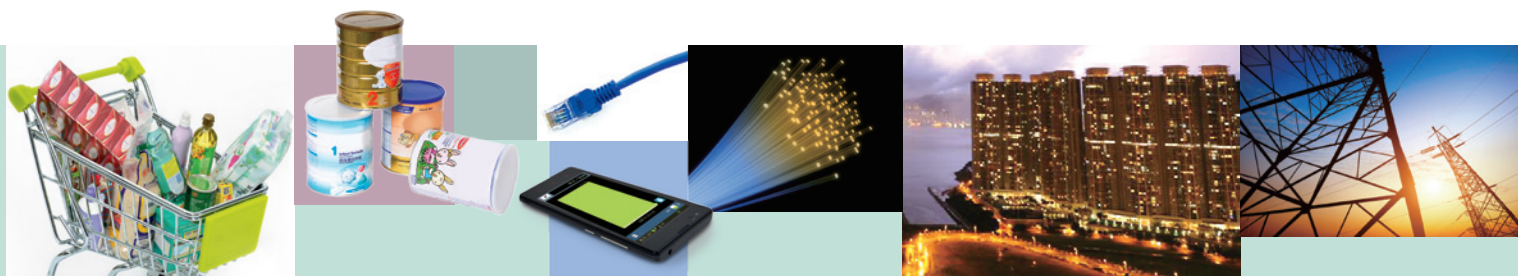
The Council conducted a sector wide study to assess the current state of competition in the grocery market following press reports concerning allegations against supermarket chains of exclusionary practices, refusal to supply to competitors and inducement of resale price maintenance. The study, entitled “Grocery Market Study – Market Power of Supermarket Chains under Scrutiny”, was issued in December 2013, and attempted to corroborate if there was prima facie anti-competitive restrictions and abuse of market power by supermarket chains possessing substantial market power.

### 競爭及營商手法的議題

年內，本會就不同議題進行深入研究，當中包括雜貨零售、電力及電訊市場的競爭及營商手法，並向政府提交意見。<sup>11</sup> 雜貨零售市場的研究報告在競爭事務委員會新成立後發表，建議規管機構就行內有關不公平營商手法的指控作出進一步調查。

### 雜貨零售市場的競爭

本會注意到多宗新聞報道，指控大型連鎖超市限制或妨礙其他雜貨零售店作出競爭、拒絕向競爭對手供貨，以及誘使訂定統一零售價格，本會因此展開對雜貨零售市場的競爭情況進行全面研究。2013年12月，本會發表「雜貨零售市場研究報告」，嘗試找出大型連鎖超市反競爭行為的表面證據，以及擁有強大市場權勢的大型連鎖超市有否濫用其市場權勢。



<sup>11</sup> See Appendix 11 for the list of submissions during the year.  
本年度提交的意見書一覽表見附錄十一。

The study tracked the shopping patterns of consumers in the grocery market, findings of which indicated that consumers shop for fresh produce and packaged food in supermarkets and wet markets and purchase household products and necessities in supermarkets and other retail outlets, such as personal care chain stores and independent drug stores. In this regard, supermarket chains compete with different types of shops in the markets respectively for food (pre-packaged and fresh) and household necessities.

Interviews with suppliers revealed that certain issues of trade practices required further examination. Firstly, when negotiating supply contracts, it appeared that suppliers had no or limited bargaining power and may be at a disadvantaged position in relation to retailers. Secondly, exclusivity was sometimes required by major retailers either in the supply contract or subsequent to the contract, limiting consumer choices within the market.

However, the study arrived at the conclusion that there was insufficient evidence suggesting a substantial degree of market power by either of the two major supermarkets unless supermarket chains and personal care chains within the same corporate group, under the relevant market of retailing of household necessities, were treated as one entity.

In addition, there was no clear indication that resale price maintenance was enforced within the industry, although some retailers had allegedly tried to prevent competitors from offering discounts by complaining to suppliers and threatening to halt trade. Major retailers were found to engage in the production of own-brand products that competed with the other branded goods provided by their suppliers. Such practices forced suppliers to bear high costs of unsold goods that consequently placed the suppliers at a disadvantage.

There were also no strong indications that the large supermarket chains were able to dictate terms to certain suppliers or have influence over terms that suppliers offered to smaller competitors of the supermarkets.

研究追蹤了消費者在雜貨零售市場的購物模式。結果顯示消費者於超市及街市購物新鮮及預先包裝食物，購買家居用品和日常用品時，則會前往超市及其他零售店舖如健與美連鎖店和藥房。在這層面上，大型連鎖超市在食品（預先包裝及新鮮）和家居用品的兩個市場上與不同類型的商店互相競爭。

本會在與供應商的訪談中，得知一些值得進一步探討的營商手法問題。首先，與零售商商議供應合約時，供應商在有限甚至沒有議價能力的情況下，往往處於不利位置。第二，大型零售商間中在供應合約內、或在訂立合約之後，要求享有獨賣權，從而限制消費者在市場上的選擇。

然而，在家居用品及個人護理用品零售市場下，除非把大型連鎖超市與同一企業集團內的個人護理用品連鎖店視為同一個體，否則未有充分證據顯示兩大超市佔有龐大的市場力量。

儘管有指控稱零售商向供應商投訴，如供應商不阻止其競爭對手以較低價售貨，可能停止與他們進行交易；然而這並不明確顯示行業中存在規定零售價格的行為。另一方面，大型零售商生產其自家品牌，與其供應商的產品競爭，這種手法逼使供應商負擔貨品滯銷所產生的高昂成本，在競爭上處於較不利的位置。

本會的研究結果亦未有清楚顯示大型連鎖超市能夠主導與供應商訂立合約條款，或影響供應商向規模較小的競爭對手提出的條款。



Competition Policy Committee Chairman Mr. Thomas Cheng (middle), Chief Executive Ms. Gilly Wong (right) and Chief Research and Trade Practices Officer Dr. Victor Hung (left) presented findings of the Grocery Market Study.

競爭政策小組主席鄭建韓先生(中)、總幹事黃鳳嫻女士(右)和總研究及商營手法事務主任熊天佑博士(左)公布雜貨零售市場研究報告。

The Council called on the Competition Commission to consider examining the issue with its investigative powers when the Competition Ordinance comes into full operation. The Council also urged the industry to adopt a self-regulatory scheme conducive to providing a satisfactory form of redress for market participants who were aggrieved with what they considered unfair practices in the sector.

It was noted also with some concern that the law of competition lacked merger and acquisition provisions except for the telecommunications sector. Any attempted acquisitions by supermarket incumbents of assets to the effect that new entrants were denied the opportunity to either enter the grocery market or increase their presence, would not be subject to regulation. The Consumer Council noted that the Government had undertaken to review the Competition Ordinance a few years after the full implementation of the Ordinance.

The Council will continue to monitor the sector through independent and rigorous market surveys and inquiries. The Council believes pro-active measures to safeguard market competition will soon evolve and become more apparent as the impact of market surveillance gathers momentum within society.

## Future Fuel Mix of the Electricity Market

The Council studied the development of the electricity market with respect to the consultation of the future fuel mix policy of electricity generation, the demand side management and the future regulatory framework.

With environmental policy objectives on the agenda against the backdrop of climate change and clean air in Hong Kong, which all contribute to rising costs of fuel, the Council was of the view that it had become more crucial than ever for energy providers to increase information transparency and implement appropriate measures for reducing the effects that an increase in electricity tariffs may create.

Equally important was a well-designed and practical demand management policy which encourages consumers to save energy, and also a fair system in which residential users can equally derive benefits from the costs saved in respect of electricity supply as a result of demand management policy. This should exceed the financial incentives provided under Scheme of Control Agreements for the two energy providers to use more renewable energy and reduce demand.

The Council supported the government's stance that the two energy providers should increase their social obligations by devoting their efforts to exploring future energy developments, helping the underprivileged by means of a tariff support scheme and driving stronger disclosure on their commitment to the future of cleaner energy.

本會呼籲競爭事務委員會考慮當《競爭條例》實施時，運用調查權探究這些問題；與此同時，本會促請業界制定出一套自我監管的機制，有助認為自己遭到不公平手法對待的市場參與者，建立一個有效的途徑尋求公道。

除了電訊市場外，法例並未將合併和收購列入反競爭行為的規管範圍。目前在雜貨零售市場的超市若試圖通過收購資產令新投資者進入市場的機會減少，或增加自身在市場的佔有率，並不受規管。然而本會注意到政府承諾將會在《競爭條例》全面實施數年後對條例進行檢討。

因此，本會將繼續透過獨立和積極的市場研究和調查監察這個市場。本會相信隨著市場監察在社會上的影響日益增強，保障市場競爭的進取措施即將進一步發展和更為明確。

## 電力市場的燃料組合發展

本會正就未來發電燃料組合的政策諮詢、需求管理及未來的規管架構，進行一項有關電力市場發展的研究。

在氣候變化及改善空氣質素的大前提下，環境政策目標已經成為重要議題，惟實現這些目標會導致燃料成本上升。本會認為電力公司比以往更加需要加強信息透明度和實施適當措施以減少因增加電費所帶來的影響。

儘管兩間電力公司是受到《管制計劃協議》的經濟誘因而增加使用可再生能源和減少需求，同樣重要的是實施設計良好及實際可行的需求管理政策以鼓勵消費者節約能源，並建立公平的制度，讓住宅用戶可分享從需求管理政策節省下來的電力供應成本。

本會支持政府的立場，兩間電力公司應該承擔更多的社會責任，包括致力探索未來的能源發展、透過電費優惠計劃扶助弱勢社群及就其未來潔淨能源的承諾提供更多資料。

While the government is contemplating new initiatives and competition for the electricity market as early as 2018, and with its current review of the future fuel mix, it is time for the government to require the disclosure of a comprehensive range of performance and financial data by the two energy providers for public scrutiny. Full disclosure by way of separate account reporting by different segments could enhance transparency and provide the necessary information for formulating the possible market reform of the electricity sector beyond 2018.

## Acquisition of CSL New World Mobility Limited by HKT Limited

The proposed acquisition of CSL by another carrier licensee, HKT Limited (the parent company of carrier licensee HKT), raised public concerns as to whether the acquisition would have, or likely have the effect of substantially reducing competition within the telecommunications market.

Further, the commitment by HKT to honour their agreement with China Mobile after the proposed transaction, which allows China Mobile to access 50% of 3G spectrum in the market, and with China Mobile's holding of a 25% share of the total 4G spectrum and possible acquisition of additional spectrum, would make China Mobile the biggest and possibly dominant player in the long-term.

Therefore, the Council called upon the Communications Authority (CA) to conduct a detailed investigation to assess the potential effect of the transaction on competition within the marketplace and investigate the likelihood that the transaction would increase prices and lower service quality within the mobile telecommunication service sector as well as the possible tactical consideration of the potential coordination between mobile carriers after the transaction.

In its submission to the CA, the Council stated that the body should closely monitor the developments within the sector and take necessary measures when appropriate with the ultimate goal of promoting fair competition and safeguarding the long-term benefits of consumers in Hong Kong.

## Supply and Price of Powdered Formula

Frustrated by the surge in price and out-of-stock situation of powdered formulas, large numbers of consumers lodged complaints with the Council, amounting to 169 related complaints in the first quarter of 2013, of which 64 were related to short supplies and 60 about price disputes. As the supply and price problems were largely due to parallel traders diverting large quantities of powdered formula away from the market, the government regulated the market by

當政府正在為2018年以後的電力市場籌劃新的措施和引入競爭，並檢討未來發電燃料組合，這正是時候要求兩間電力公司公開其全面業績和財務數據讓公眾審查。透過分類獨立賬戶報告作全面披露，可以提高透明度，為制定2018年以後電力市場改革提供所需資料。

## 香港電訊有限公司收購 CSL New World Mobility Limited

香港電訊有限公司（傳送者牌照持牌人香港電訊的母公司）提出收購CSL的建議，引起公眾質疑是次收購將會或可能會嚴重削弱電訊市場競爭。

此外，香港電訊承諾履行其與中國移動通訊的協議，若建議的交易達成，中國移動通訊便可使用市場內五成的3G頻譜，連同現已擁有的25%總4G頻譜，以及將來可能取得更多額外頻譜，這使中國移動通訊在未來可能成為電訊市場中最大及有主導地位的參與者。

因此，我們要求通訊事務管理局進行詳細的調查，評估該項交易對市場競爭的潛在影響、導致價格提高及流動通訊服務質素下降的可能性，以及在交易後流動電訊網路商協調相互策略的潛在可能性。

在提交到通訊事務管理局的意見中，本會指出管理局應密切監察通訊業的發展，並採取適當的措施，以達致促進公平競爭及保障香港消費者長遠利益的最終目標。

## 嬰幼兒奶粉的供應和價格

2013年首季，本會收到消費者因不滿奶粉價格上漲以及供應不足的投訴有169宗，當中，64宗涉及供應不足、60宗有關價格爭議。由於奶粉供應不足和價格的問題主要原因是水貨客把大量奶粉轉離香港市場，政府於2013年3月1日通過實施並由海關執法的《2013年進出口（一般）（修訂）規例》，限制配方奶粉的出口；規例規定離境人士可攜帶淨重不超過1.8公斤的配方奶粉，或兩罐配方



limiting the total net weight of powdered formula carried by a person departing Hong Kong to no more than 1.8 kg, or two cans of powdered formula. The limit was stipulated with amendments to the Import and Export (General) Regulations, effective on 1 March 2013, and enforced by the Customs and Excise Department. The Council welcomed the government's new measure, which resulted in a significant reduction in the number of complaints received.

The Council continued to advocate the needs of local parents in its collaboration with the government and different stakeholders and the Council tendered advice to the Committee on Supply Chain of Powdered Formula, set up by the government in July 2013 to ensure stable and sufficient supplies of powdered infant formula for local parents.

To step up surveillance of the market situation on powdered infant formula, the Council conducted an ad hoc survey concerning price and supply of new born infant formula before and after the Chinese Lunar New Year in 2014, which is seen as the peak season for parents to stock up on the product for the long holiday.

The survey covered 18 districts, and was conducted in addition to the regular bi-monthly surveys concerning the price of infant formulas. The survey covering the pre-Lunar New Year period revealed varied findings on shortages of products in different districts, with the situation of one brand being most acute. Findings from the survey undertaken after the Lunar New Year revealed that the situation had improved. Subsequent to the survey, the Council discussed the findings with relevant suppliers, and urged them to take measures to improve the situation.

While the Council was attentive to the problems in the supply chain of powdered infant formula, it also paid attention to the representation of infant powdered formula in advertisements and promotional messages. The Consumer Council actively participated in the Department of Health's Taskforce for contribution to the development of the Hong Kong Code of Marketing of Breastmilk Substitutes.

## Protection for Retail Investors under Professional Investor Regime

The Consumer Council responded to a consultation paper by the Securities and Futures Commission (SFC) regarding the proposed amendments to the Professional Investor (PI) Regime. On a whole, the Council supported the SFC's PI review and its efforts to improve, clarify and update the distinction between professional and retail investors. The Council considered that concerns about whether investors had been inappropriately classified as 'experienced' investors and treated as professionals and therefore crowded out from the protection mechanisms should be addressed

奶粉。本會歡迎政府採取的新措施，接獲的投訴亦因而大幅減少。

政府在2013年7月成立一個《配方粉供應鏈方案委員會》，目的是確保本地家長得到穩定及足夠的嬰兒配方奶粉供應。本會向此委員會提供意見，並繼續與政府和各持分者合作反映本地家長的需要。

為加強對嬰兒配方奶粉的市場監察，在2014年農曆新年前後，奶粉需求的高峰期（因家長為長假期預備多點配方奶粉），本會額外增加調查，搜集初生嬰兒奶粉的供應和零售價資料。

除了恒常每兩個月的奶粉價格調查外，是次調查涵蓋了全港十八區。農曆新年前的調查發現，各區的產品缺貨情況不一，當中一個品牌尤其嚴重。但在農曆新年假期後，缺貨情況有所改善。本會遂與有關的供應商討論調查的結果，並促請他們積極跟進。本會亦會繼續監察配方奶產品的價格和供應情況。

本會一方面注意嬰兒配方奶粉供應鏈的問題，而另一方面，亦關注嬰兒配方奶粉的廣告及宣傳訊息。本會積極參與衛生署《香港母乳代用品銷售守則》專責小組，就制定有關守則提供意見。

## 專業投資者制度下給予零售投資者的保障

本會回應了由證券及期貨事務監察委員會（證監會）發出有關建議修訂專業投資者制度的諮詢文件。整體來說，本會支持證監會的檢討，以及其致力改善、澄清及更新區分專業與零售投資者的工作。投資者因被誤當具「經驗」的投資人士而被界定為專業投資者，最終被併諸保護機制門外，是一項值得關注的問題，必須獲得處理。這才可以為投資者及消費者帶來更完善的保障，提高他們對金融業的信任。

to bring about greater protection and enhance the level of trust that investors and consumers had in the financial industry.

With regard to the PI regime, the Council considered that the proposals contained within the consultation paper could provide a better level of investor protection if supported by periodic reviews of the monetary threshold for individual PIs and application of effective suitability requirements, compliance of intermediaries in providing appropriate product recommendations to investors, a client opt-in mechanism to be treated as a PI and better product regulations to improve disclosure standards.

The Council also urged that further efforts were needed to educate investors with respect to the difference in the level of protection made available under the retail/professional regulatory framework.

## Outbound Package Tours without Tour Escort

In response to concerns expressed by the Hong Kong Tourism Industry Employees General Union, the Council conveyed its views and observations to the Travel Industry Council (TIC) over the absence of Hong Kong tour escorts for outbound package tours.

The Council noted the upward trend for local travel agencies to dispense with tour escorts for short-distance outbound package tours (involving cross-border land transport only) or for tours with patrons falling below a certain threshold (usually 15 patrons). Consumers were not explicitly informed of the situation and the indication contained within promotion leaflets was often inconspicuous.

The TIC was urged to make it a requirement for travel agents to disclose to consumers by using a larger font size on leaflets and making verbal explanations to the fact that the tour is or may be conducted without escorts. The Council also suggested that the industry should offer more consumer protection in cases of tours without escorts by allowing consumers to opt out with a full refund while also providing a round-the-clock telephone hotline and/or other support services.

The TIC expressed no disagreement with regards to the Council's comments in general, however, they were in the opinion that the existing level of protection offered to consumers is sufficient and therefore preferred maintaining the current arrangements.

本會認為諮詢文件的建議，若能配合定期檢討界定個人專業投資者的資產總值限額、為個別投資者作有效的合適性評估、監察中介人嚴格遵守規定，為投資者提供合適投資意見、給予投資者選擇權決定是否加入成為專業投資者的機制，以及改善產品監管制度，可為投資者提供更佳保障。

當然，本會亦促請監管局進行投資者教育工作，讓投資者清楚了解在零售／專業投資者規管制度下消費者保障措施各有不同。

## 外遊團不設領隊

為回應香港旅遊業僱員總會早前表達的憂慮，本會向旅遊業議會傳達本會就外遊旅行團不設香港領隊的現象之意見及觀察。

本會留意到本地短途外遊旅行團（只涉及陸路過境）或人數少於一定下限（通常為十五人）的旅行團有不設領隊的情況，且有上升趨勢。有投訴謂，消費者沒有被清楚知會有關情況，而宣傳單張內有關此安排的提示亦往往不明顯。

本會促請旅遊業議會，要求旅行代理商在宣傳單張以較大字體，或口頭向消費者解釋，說明旅行團沒有或可能沒有領隊的情況。本會亦提議業界應容許消費者在知道旅行團不設領隊的情況後，可選擇全數退款，及提供一個廿四小時的電話熱線及／或其他支援服務，向消費者提供較佳保障。

旅遊業議會大致上對本會的意見沒有表示異議，但他們認為目前的保障程度已經足夠，因此傾向保留目前安排。