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For Immediate Release

Competition Commission takes Textbook cartel case to Competition Tribunal

The Competition Commission (“Commission”) has today commenced proceedings in the Competition Tribunal (“Tribunal”) against **three companies**, namely T.H. Lee Book Company Limited, Commercial Press (Hong Kong) Limited and Sino United Publishing (Holdings) Limited (“Companies”); and **an individual** Mr. Hui Chiu Ming (“Mr. Hui”), the General Manager of T.H. Lee Book Company Limited.

The Commission alleges that the Companies have contravened the First Conduct Rule of the Competition Ordinance (“Ordinance”) by engaging in price-fixing, market-sharing, and/or bid-rigging in relation to the sale of textbooks to students attending primary and secondary schools in Hong Kong (“Cartel Arrangements”). Although the Cartel Arrangements were arrived at prior to the full implementation of the Ordinance, the Companies had continued to give effect to the Cartel Arrangements and/or had engaged in them after the Ordinance came into full effect. As for Mr. Hui, the Commission alleges that he is a person involved in the Cartel Arrangements within the meaning of section 91 of the Ordinance.

The Commission is seeking orders including:

- a declaration that the Companies have contravened the First Conduct Rule and Mr. Hui is a person involved in the contravention;
- an order for pecuniary penalties to be imposed on the Companies and Mr. Hui; and
- a director disqualification order against Mr. Hui.

Mr. Brent Snyder, CEO of the Commission, said, “This case highlights the risks to businesses that reach cartel agreements, even those that continue in cartels which began before the Ordinance came into full effect. To be clear, the Commission will investigate and take action against any such agreements that began or continued after the Ordinance came into full effect.

The Commission calls for market participants including trade associations in all sectors to thoroughly review their practices and desist from any cartel conduct or arrangements, including those that have been established before the full implementation of the Ordinance. Businesses already involved in such conduct should approach the Commission for leniency or cooperation.”

Notes to the Editor

The Competition Ordinance

The objective of the Competition Ordinance (Ordinance) is to prohibit conduct that prevents, restricts or distorts competition and mergers that substantially lessen competition in Hong Kong. At the present time, the Merger Rule applies only to a merger involving an undertaking that directly or indirectly holds a carrier licence issued under the Telecommunications Ordinance (Cap. 106). The competition rules in the Ordinance came into force on 14 December 2015.

The First Conduct Rule

Under the First Conduct Rule in section 6(1) of the Ordinance, undertakings are prohibited from making or giving effect to an agreement, or engaging in a concerted practice, if the object or effect of the agreement or concerted practice is to prevent, restrict or distort competition in Hong Kong. Cartel conduct, which includes price fixing, market sharing and bid-rigging, is generally regarded as a particularly harmful form of anti-competitive agreement or concerted practice.

Persons Involved in Contravention

Under section 91 of the Ordinance, a person involved in a contravention of a competition rule is a person who: attempts to contravene the rule; aids, abets, counsels or procures any other person to contravene the rule; induces or attempts to induce any other person, whether by threats or promises or otherwise, to contravene the rule; is in any way, directly or indirectly, knowingly concerned in or a party to the contravention of the rule; or conspires with any other person to contravene the rule.

Disqualification under the Ordinance

Section 101 of the Ordinance provides that the Tribunal may order that a person may not, without the leave of the Tribunal: (a) be, or continue to be, a director of a company; (b) be a liquidator or provisional liquidator of a company; (c) be a receiver or manager of a company's property; or (d) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company; for a specified period of time. Under section 102 of the Ordinance, the Tribunal may only make the above order if the Tribunal has determined that a company of which the person is a director has contravened a competition rule and that the Tribunal considers that the person's conduct as a director makes the person unfit to be concerned in the management of a company.