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For Immediate Release

**Competition Commission advises on employers' joint negotiations with employee bodies on employment matters**

The Competition Commission (“Commission”) today published an Advisory Bulletin to provide guidance on how the Competition Ordinance (“Ordinance”) applies to the conduct of employers in the context of their joint negotiations with employee bodies on employment matters (“joint negotiations”).

In any given market, competition between companies is not confined to the selling of their products and provision of services but also involves these companies competing for resources that generate and sustain their businesses. In this respect, human resources are a vital component for all industries.

Generally speaking, employers should be competing vigorously against each other on, among other things, employees’ compensation and other employment conditions (“employment conditions”) in hiring and retaining employees. However, if employers agree or share competitively sensitive information on employment conditions in the process, such conduct may raise concerns under the First Conduct Rule of the Ordinance.

Joint negotiations may involve groups of employers or more than one employer jointly negotiating with employee bodies to determine employment conditions. As the process of such negotiations and its results may involve agreements or the sharing of competitively sensitive information regarding employment conditions between employers, it may give rise to competition concerns under the Ordinance.

Noting the purpose of joint negotiations and the benefits it may have on improving employment conditions for employees, and considering its enforcement priorities, the Commission issued a bulletin today to provide guidance on the matter. In brief, the Commission clarified that it has **no** current intention to pursue an investigation or enforcement action in respect of certain conduct by employers in the context of joint negotiations, provided that the need for relevant employers to jointly negotiate with employee bodies is justified given the industry characteristics and:

- (i) the purpose of the conduct is to improve, which could include maintaining, relevant employment conditions; and
- (ii) an employee body is a genuine participant in the joint negotiation process.

As set out in the bulletin, the above would apply to two types of conduct by employers, namely (a) the issuance of compensation recommendations<sup>1</sup> by groups of employers to their members

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<sup>1</sup> The issuance of compensation recommendations covers recommendations to adjust salaries by a certain percentage without fixing the level of the salary itself.

which incorporate the results of joint negotiations with employee bodies, and (b) the sharing of expectations about future compensation between employers, in preparation for or in the course of joint negotiations, if necessary for that purpose.

Notwithstanding the Commission's current intention not to pursue enforcement action against these two types of conduct, employers are reminded that the Commission does intend to investigate practices which do not meet the aforementioned conditions and raise competition concerns. In particular, when members of groups of employers share information amongst themselves about their intentions over employment conditions, or make a recommended compensation announcement outside the context of joint negotiations, such conduct may constitute a contravention of the Ordinance.

Mr. Rasul Butt, Chief Executive Officer of the Commission, said, "Joint negotiations can bring about improved employment conditions for employees, such as better wages and fringe benefits, which may not be achievable if employees were to negotiate with employers on an individual basis.

In Hong Kong, the Ordinance does not exempt or exclude its application in cases of joint negotiations. But considering the Commission's enforcement policy, and having regard to the benefits that joint negotiations may bring, the Commission is publishing guidance today for employers, employees, and members of the public at large on the Commission's stance on the subject, with an aim to provide certainty to market participants and to facilitate joint negotiations which may result in better outcomes for employees."

Together with the bulletin, the Commission also published a set of frequently asked questions with a number of hypothetical scenarios to further elaborate on the subject. The Commission calls on all employers and groups of employers to actively review their approach to joint negotiations and make changes where needed to ensure compliance with the Ordinance.

The latest bulletin should be read in conjunction with the Commission's Guideline on the First Conduct Rule and the Commission's previous advisory publications relating to trade associations and employment<sup>2</sup>.

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<sup>2</sup> They are the Competition Commission's Advisory Bulletin, [Competition concerns regarding certain provisions in the Codes of Conduct of the Hong Kong Institute of Architects and the Hong Kong Institute of Planners](#), issued on 28 November 2016; and the Advisory Bulletin, [Competition concerns regarding certain practices in the employment marketplace in relation to hiring and terms and conditions of employment](#), issued on 9 April 2018.