Re. Independent Committee in relation to the fire at Wang Fuk Court in Tai Po ("IC")

Written Closing Address of the Competition Commission ("CC")

Introduction

1. This is the written closing address of the CC with regards to §§2 to 4 of the Terms of Reference ("**ToR**").

2. The CC has previously filed three sets of written submissions in these proceedings:

   (1) the CC's written opening address to the IC dated 9 March 2026 ("**CC's Opening**")[1];

   (2) the CC's written report to the IC dated 14 May 2026 ("**CC's Written Report**")[2]; and

   (3) the CC's recommendations in relation to ToR (2) dated 17 June 2026 ("**CC's Written Recommendations**").

3. In addition to providing an overview of what has already been submitted, these submissions will aim to provide the IC with the CC's final observations on ToR (2)-(4).

4. In summary, the CC's position (much of which has previously been set out) is as follows:

   Re. ToR (2)

   (1) There are widespread, systematic, and longstanding practices among a sizable number of building maintenance contractors to affect the outcome of tenders for building maintenance works.

   (2) Such practices are sometimes (although not necessarily) facilitated by malpractices from supposedly independent consultants that have been engaged by the owners of the relevant buildings.

[1] https://www.ic-wangfukcourtfire.gov.hk/pdf/docs/Opening-Address-CC_20260324.pdf
[2] https://www.ic-wangfukcourtfire.gov.hk/pdf/docs/CC-report-for-IC.pdf

(3) Such practices extend beyond "bid-rigging" as defined under s.2 of the **<u>Competition Ordinance</u>** (Cap. 619) ("**CO**"). In fact, they may include other forms of serious anti-competitive conduct such as:

(a) exchanging competitively sensitive information (e.g. price);

(b) engaging in an overarching market-sharing agreement; and

(c) sharing of company credentials so as to facilitate the submission of cover-bids.

(4) There exists the practice of phantom-bidding (e.g. where one undertaking sets up a number of ostensibly independent companies that end up bidding "against" one another). Depending on the extent to which the "phantom-bidders" may be regarded as truly "separate" businesses, this practice may fall outside the ambit of the CO if it is not regarded as involving an agreement *between* undertakings.

(5) There exist syndicate-led cartels whereby there are clear systems of *"registration"*, dissemination of *"homework"* (i.e. pricing and bidding instructions), and the presence of ring-leaders / coordinators. These syndicates may work with, as well as against, each other in any given tender.

(6) In line with the observations of the Police Force and the Independent Commission Against Corruption ("**ICAC**"), a number of building maintenance contractors and consultants are believed to be affiliated with triad societies in Hong Kong. Such triad involvement may, in turn, facilitate the operation / continuance of these anticompetitive practices through unlawful means (e.g. through the threat or use of violence).

<u>Re. ToR (3)-(4)</u>

(7) While anticompetitive agreements and concerted practices are currently captured by the CO and the submission of rigged-bids may, in certain circumstances, be caught by the offence of fraud / conspiracy to defraud, the existing regulatory framework and applicable penalties **<u>do not</u>** provide sufficient deterrence against would-be cartelists.

(8) Accordingly, the CC is supportive of any measures that are capable of meaningfully enhancing the deterrent effect of regulation through:

(a) increasing the chances of detection and successful prosecution;

(b) strengthening the sanctions against both the businesses and the individuals that are involved; and

(c) through a combination of (a) and (b) above, ensuring that cartelists are unable to profit from their anticompetitive behaviour.

(9) To this end, the CC will be proposing:

(a) that the CO be amended to expressly provide for a "dual track" enforcement model such that:

(i) natural persons who are involved in serious anti-competitive conduct in relation to the calling of any bids / tenders in Hong Kong (such as by way of bid-rigging, price-fixing, market-sharing, and output limitation) may be criminally prosecuted and face severe custodial sentences. The civil regime shall remain intact such that depending on the severity of his/her conduct and the level of involvement, civil proceedings against natural persons involved in serious anti-competitive conduct may be opted for in lieu of criminal prosecution; and

(ii) at the same time, businesses that are found to have engaged in the same conduct will remain caught by the civil regime under the CO before the Competition Tribunal ("**Tribunal**") and be liable for sweeping pecuniary penalties, the maximum of which will be uplifted through legislative amendment;

(b) insofar as civil proceedings for pecuniary penalties are concerned, the CO should expressly stipulate that the applicable standard of proof is the civil standard. This will ensure that this aspect of the CO's enforcement is on *par* with international best practices in other developed economies. In short, there is no reason why our legislation should remain silent on such an important issue - which in turn, has rendered seeking pecuniary penalties against cartelists more difficult and almost impossible in cases involving complex economic analysis; and

(c) the CO should expressly incorporate certain statutory presumptions that are in line with well-established overseas jurisprudence. For example, where it is proven that competitors (e.g. building maintenance contractors) had exchanged competitively sensitive information (e.g. through the dissemination of "*homework*"), there should be a statutory presumption that they had done so in order to influence each other's behaviour on the relevant market and that such an exchange did, in fact, have that effect.

<u>Re. Fee-Scales</u>

(10) Finally, in the event that the IC (or other Involved Parties) are minded to recommend the adoption of fee-scales, it is the CC's recommendation that:

(a) the fee-scale be compiled in circumstances that <u>**do not**</u> involve concertation between consultants / contractors (i.e. between competitors);

(b) great care should be taken to ensure that the prices used for benchmarking purposes are reasonable and competitive; and

(c) the use of fee-scales should not be the only form of due diligence that needs to be carried out as:

(i) there may be legitimate reasons why a particular consultant will be bidding aggressively in any given tender; and

(ii) conversely, just because a consultant's bid is "within range", this does not mean that the bid submitted must *ipso facto* be free from manipulation.

Part 1: Systematic Problems in Large-Scale Building Maintenance and Renovation Works in Hong Kong (ToR (2))

5. In line with the observations of the Police Force and the ICAC, the CC is of the view that there are, indeed, **widespread**, **systematic**, and **longstanding** practices between some building maintenance contractors to affect the outcome of tenders for building maintenance works.[3]

6. Such practices are:

(1) Widespread: in that geographically it covers buildings in the whole of Hong Kong and involves a substantial number of building maintenance contractors and consultants.

(2) Systematic: especially where syndicates are involved whereby there are clear systems of "*registration*", dissemination of "*homework*" and existence of ring-leaders / coordinators.

(3) Longstanding: almost every witness who has been willing to attest to the above practices has attributed this to being a longstanding trade practice in Hong Kong.

7. Below are some examples which the CC has uncovered concerning how such systematic problems may impact the building maintenance sector.

The operation of bid-rigging syndicates

8. In **Competition Commission v Cheung Kwing Kuen & 19 Others**, CTEA 1 / 2026, the CC brought enforcement proceedings for pecuniary penalties, director disqualification orders etc. against 20 businesses and individuals after forming the view that they are part of a large-scale bid-rigging syndicate operating all over Hong Kong.

[3] c.f. in particular: paragraph 28 (Police Force's observations on involvement of triad involvement in the building maintenance works sector), **Witness Statement of Lam Kai-Chor** ("**LKC W/S**"): https://www.ic-wangfukcourtfire.gov.hk/pdf/docs/Witness-Statement-Lam_Kai_Chor.pdf; and paragraphs 33 (statistics of complaints to the ICAC), 43-97 (the ICAC case studies), and 98-101 (conclusions from the ICAC), **ICAC's Report for the Independent Committee in relation to fire at Wang Fuk Court in Tai Po** (January 2026) ("**ICAC Report**"): https://www.ic-wangfukcourtfire.gov.hk/pdf/docs/ICAC-report-for-IC.pdf.

9. In particular, the CC has evidence to show that:

(1) The 1st Respondent, Mr. Cheung Kwing Kuen ("**Cheung**") also known by his alias "*Dai B*" (大 B) had, himself and/or through various companies under his control operated as (or through) a syndicate and was involved in at least 11 tenders for building maintenance work spanning Hong Kong Island, Kowloon and New Territories over the course of 2 years.

(2) The *modus operandi* of the syndicate was highly sophisticated and organized - utilising and deploying various codes and jargons such as *"homework"* (i.e. pricing and bidding instructions), *"main character"* (i.e. the designated winner), *"helper"* (i.e. the designated cover-bidders), and *"blow the whistle"* (i.e. the summoning of other businesses / persons to assist).

(3) The scale and objective of the syndicate was, or at least had the potential to be, a sizable one. In one communication between Cheung and his associates, he opined that he was confident in securing a 25% market share on the relevant market.[4]

10. In terms of how the syndicate operated: upon Cheung and his associates identifying a particular tender opportunity which they wish to secure, Cheung and/or businesses under his control would prepare and distribute *"homework"* to selected building contractors. These building contractors would then either entirely "copy" the terms of the *"homework"* in their own bids in the relevant tender or at least make references to the terms therein - in both cases to ensure that the chances of the *"main character"* (the designated winner) winning the tender would be increased.

11. Finally, it is significant to note that the anticompetitive practices deployed by members of the syndicate extended well beyond just bid-rigging. In fact, almost in every project where the syndicate had tried to rig the outcome of a tender, it had also engaged in:

(1) Price-fixing;

(2) Exchanging competitively sensitive information; and

(3) Market allocation / sharing;

[4] See. paragraph 28 of the CC's Originating Notice of Application in CTEA 1 / 2026 ("**ONA**"): https://www.ic-wangfukcourtfire.gov.hk/pdf/docs/CC-originating-notice-of-application.pdf.

all of which, along with bid-rigging, are also regarded as "serious anti-competitive conduct" under the CO.[5]

12. The CC would like to stress that the respondents in CTEA 1 / 2026 have yet to file their defence in the proceedings and that the allegations of the CC as set out above and in its ONA remain to be tested before the Tribunal.

13. Notwithstanding the above, CTEA 1 / 2026 represents one of the syndicates operating in the building maintenance sector which are under active investigation by the CC.

Involvement of triads / tainted consultants

14. With respect to the involvement of triads and tainted consultants, the CC's own experiences and observations are *ad idem* with the general observations of the Police Force and the ICAC.[6]

15. As set out in one of the Case Studies provided by the CC in its Written Report, the CC has previously encountered cases where building maintenance contractors would, through concertation with the supposedly independent consultant, use threats of or actual violence to dissuade other contractors from bidding in tenders. On that occasion, the threat of and actual violence was delivered by a person claiming to be a member of a triad society.[7]

16. The potential presence / prevalence of tainted consultants was also alluded to by the CC's own market study in 2016 which revealed suspicious patterns that are consistent with there being widespread bid-manipulation practices in Hong Kong. In particular:

[5] c.f. paragraphs 53-71 ONA.
[6] See. in particular: ICAC Report at [95] *"*[i]*n many instances the contractor was often part of a crime syndicate with triad connection, who would collude with the consultant and other contractors to rig the bids… in order to manipulate the selection of the contractor for the project"* and at [99] *"*[o]*rganized syndicates, employing illicit methods such as corruption, triad tactics, bid-rigging and fraud to manipulate the tendering processes, are driven by the potential profits to seek a dominant market share."*; and LKC W/S at [28] *"Triad involvement takes many forms, including direct involvement and discreet approaches through front persons, influence over "concern groups" or participation via indirect links with consultants or contractors. It may be inaccurate to assume that triads are always the dominant driver or that they are significant involved because many bid-rigging schemes are organized and executed by ordinary market players, with triad elements engaged only at particular stages, or not at all. When someone has to "do the dirty work" and the use of some forms of suppression and/or violence is essential, triads would then become the "enforcer". Having said that, intelligence indicated that a small number of triads had set up and were operating their own consultant and contractor companies to participate in building maintenance works."*
[7] Case Study (1), paragraph 13, CC's Written Report: https://www.ic-wangfukcourtfire.gov.hk/pdf/docs/CC-report-for-IC.pdf

(1) A substantial number of bids which supposedly independent consultants had submitted fell below the minimum cost of providing the relevant services. This would suggest that unless the consultants were willing to engage in loss-making behaviour (which generally makes no commercial sense), these consultants might have expected to be remunerated through other (possibly nefarious) means.

(2) In a number of instances, consultants were recorded as having priced their bids in circumstances that did not appear to have any meaningful correlation with the size of the project. This, in turn, suggests that these consultants might have priced their bids in circumstances that were unrelated to the projected costs in undertaking the relevant works.

(3) Statistically, the frequency in which certain consultants would end up working with certain contractors would lend support to the existence of some form of vertical cooperation between the consultant and the chosen contractor.

17. In the foregoing circumstances, the CC supports and concurs with the views expressed by the Police Force and the ICAC on the prevalence of triad / corruption in the building maintenance sector.

Phantom Bidding

18. Finally, the CC has observed that there exists the practice of phantom-bidding (e.g. where one undertaking sets up a number of ostensibly independent companies that end up bidding “against” one another).

19. Depending on the extent to which the “phantom-bidders” may be regarded as truly “separate” businesses, this practice may fall outside the ambit of the CO if it is not regarded as involving an agreement *between* undertakings.

20. Since this practice may be capable of misleading the procurer into believing that it is receiving independently articulated bids, it may be prudent for procurers to require any prospective bidders to make corresponding declarations of ultimate beneficial ownership so as to allow the procurer to easily ascertain which bidders may be under common *de facto* control / ownership.[8]

[8] This being one of the primary purposes of the CC’s amendments to the model “Non-Collusion Clauses” in 2023. See also: paragraph 22 of CC’s Written Opening and paragraphs 23 - 24 of CC’s Written Report.

Part 2: Existing Regulations and Penalties and the CC's Recommendations (ToR (3) and (4))

ToR (3)

21. In terms of existing regulations and penalties, these have been extensively set out in:

    (1) paragraphs 14 - 26 of CC's Written Opening; and

    (2) paragraphs 15 - 27 of CC's Written Report;

    the contents of which will not be repeated herein.

22. Notwithstanding the fact that:

    (1) the CO has been in full commencement since December 2015 and that bid-rigging and related anticompetitive practices are clearly prohibited by the CO; and

    (2) persons involved in rigging building maintenance tenders may, themselves, be criminally liable for fraud / conspiracy to defraud if they had knowingly made false representations in the course of bidding,

    the CC is of the view that the existing regulatory framework and applicable penalties are not sufficiently deterrent against existing / would-be cartelists.

23. That this is the case may be the result of a host of factors most notably:

    (1) the highly lucrative reward for cartelists (c.f. the ICAC's conclusion at paragraph 99 of the ICAC Report and paragraph 36 of LKC W/S);

    (2) the perceived "weakness" in sanctions for breaching the CO - which has, time and again, been labeled as *"only being civil in nature"* (c.f. the Police Force's conclusion at paragraph 36 of LKC W/S); and

    (3) the secretive nature of such conduct (especially if the secrecy is backed up by threats from organized crime) and the corresponding high standard of proof required for criminal prosecution (c.f. paragraph 96 of the ICAC Report on both propositions; and

paragraph 37 of LKC W/S on the secretive nature of collusive activities and ineffectiveness of traditional investigative tools).

ToR (4)

24. To address the systemic problems identified above (in particular at paragraph 23), the CC's recommendations are as follows:

Criminalisation

(1) First, the CC considers that it is high time for the CO to be amended to expressly criminalise **any** sort of serious anti-competitive conduct (as defined in the CO) that are capable of affecting the outcome of a bid / tender carried out in Hong Kong.

(2) This may be done with reference to / on top of the existing provisions under s.91 CO which already provides for liability for natural persons who are involved in a contravention of the conduct rules (including bid-rigging).

(3) Importantly, other forms of serious anti-competitive conduct should also be criminalised (not just bid-rigging) because, as set out at paragraph 11 above, bid-rigging seldom occurs alone. It is usually further or in addition to other forms of serious anti-competitive conduct which should also be criminalised lest there be any lacuna in the future legislation.

(4) The operation of criminal sanctions should be targeted against natural persons with severe maximum sentences that are capable of both general and specific deterrence. Existing provisions concerning civil sanctions against natural persons should, however, still be retained such that depending on the severity of his/her conduct and the level of involvement, civil proceedings against natural persons involved in serious anti-competitive conduct may be opted for in lieu of criminal prosecution.

(5) As for the underlying businesses, these should remain within the purview of the existing provisions of the CO such that, in any given case where the CC has proof that they have engaged in bid-rigging etc., they will be liable for sweeping pecuniary penalties. The effectiveness of the deterrence against these businesses should, in turn, be enhanced through the legislative amendments to the CO that will:

(i) clarify the applicable standard of proof to be applied in proceedings involving pecuniary penalty; and

(ii) establish certain statutory presumptions in aid of prosecution.

c.f. paragraphs 24(7) - (8) below.

(6) The operation of this newly created criminal regime may be in a "dual track" format with appropriate safeguards (much like the "dual track" model adopted in the **Securities and Futures Ordinance** (Cap. 571)) to ensure that, in the interest of fairness, the same individual will not be prosecuted against twice in respect of the same conduct.

Other Amendments to the CO

(7) Secondly, the CO should be expressly amended to make clear that even in proceedings where the CC is seeking pecuniary penalties, the applicable standard of proof should be that of the civil standard. This will ensure that this aspect of the CO's enforcement is on *par* with international best practices in other developed economies.[9] There is no discernable reason why our legislation should remain silent on such an important issue - which in turn, has had the unintended consequences of rendering seeking pecuniary penalties against cartelists more difficult and almost impossible in cases involving complex economic analysis.

(8) Thirdly, the CO should expressly incorporate certain statutory presumptions that are in line with well-established overseas jurisprudence. For example, where it is proven that competitors (e.g. building maintenance contractors) had exchanged competitively sensitive information (e.g. through the dissemination of *"homework"*), there should be a statutory presumption that they had done so in order to influence each other's behaviour on the relevant market and that such an exchange did, in fact, have that effect.

(9) Finally, the maximum amount of pecuniary penalty (currently for an undertaking it is at 10% of its Hong Kong turnover for each year of contravention, up to a maximum of 3 years) and maximum period of

[9] For example: the United Kingdom, Australia, European Union, Singapore, and New Zealand.

director disqualification (currently at 5 years) should be substantially increased. This should obviously be without prejudice to any sort of considerations of inability to pay / undue harshness etc. which a respondent may still properly submit in mitigation.

<u>Part 3: Fee-Scales</u>

25. The CC has previously provided its written response at paragraphs 4 - 31 of CC's Written Recommendations setting out why:

(1) fee-scales that are compiled by members of a trade association discussing / agreeing on prospective prices will likely contravene the First Conduct Rule under the CO ("**FCR**"); and

(2) fee-scales that are compiled by a statutory body (such as the Urban Renewal Authority) in circumstances that do not involve collusion between businesses will unlikely contravene the FCR.

26. If it is the intention of the IC (or other Involved Parties) to recommend the adoption of a set of fee-scales for future references, the CC repeats its recommendations that:

(1) the fee-scale be compiled in circumstances that **<u>do not</u>** involve concertation between consultants / contractors (i.e. between competitors);

(2) great care should be taken to ensure that the prices used for benchmarking purposes are reasonable and competitive rather than distorted because of anti-competitive practices; and

(3) the use of fee-scales should not be the only form of due diligence that needs to be carried out as:

(i) there may be legitimate reasons why a particular consultant will be bidding aggressively in any given tender; and

(ii) conversely, just because a consultant's bid is "within range", this does not mean that the bid submitted must *ipso facto* be free from manipulation.

Concluding Remarks

27. The CC was, and remains, one of the key stakeholders and parties responsible for rooting out all anticompetitive conduct in the building maintenance sector where the consumers (i.e. residents) may be particularly vulnerable given the peculiarities of the market.

28. The CC hopes that these submissions have adequately addressed ToR (2) - (4) and will welcome any opportunity to further address / assist the IC as may be required / necessary.

Dated the 7th day of July 2026.

Competition Commission