



本會檔號 OUR REF : EC/036M
來函檔號 YOUR REF :
電 話 TEL. NO. : 3462 2118
傳 真 FAX NO. : 2522 4997

13 July 2018

Private and confidential

By email [REDACTED]

Dear Sir,

Complaint against [REDACTED] in refusing to provide written prescription

Thank you for your emails of 22 June and 13 July 2018. The Commission's reference number for your complaint is EC/036M. Please quote this number in any further correspondence with the Commission.

The Commission notes your following allegations against [REDACTED] and your concern that their conduct may contravene the Competition Ordinance (the "Ordinance"):

- the head nurse and physician of [REDACTED] refused to issue a written prescription to a patient (who has consulted with you) and as a result this patient could not purchase medicines from other pharmacies;
- in the case of this particular patient, she was charged HKD\$800 for 28 tablets of "Nexium" at [REDACTED] and had she been given a prescription, she could have purchased the same for about HKD\$300 at a community pharmacy; and
- you alleged that this practice is anti-competitive as it forced patients to only purchase drugs from [REDACTED]'s own clinic.

Overview of the Ordinance

The Ordinance prohibits undertakings from engaging in anti-competitive conduct which has the object or effect of harming competition in Hong Kong. It achieves this

through two key rules of general application, known as the First Conduct Rule ("FCR") and Second Conduct Rule ("SCR").

The FCR seeks to prohibit arrangements between market participants (whether they are competitors or not) which harm competition in Hong Kong. For example, it prevents competitors from colluding on key parameters of competition such as price, output or how they bid. The SCR targets businesses with substantial degree of market power who abuse that power with a view to protecting or increasing their position of power and profits.

Assessment of your complaint

The Commission has considered your complaint and it does not propose to take further actions in relation to it at this stage for the reasons set out below.

As set out in the Commission's Guidelines on the FCR and SCR, businesses are generally free to independently determine how they will offer goods and services. Another party can similarly decide whether to accept the way in which such goods and services are offered. This includes, for example, a business unilaterally decides to offer services (e.g. medical services) on certain terms and conditions.

Such arrangement generally only raises concerns under the Ordinance in limited circumstances where it has the effect of preventing, restricting or distorting competition in a relevant market. Specifically, this is more likely to occur if one of the parties to the arrangement has market power in a relevant market (e.g. drug prescription services) and the arrangement is likely to foreclose its rivals' access to that or another related market.

Based on the available information, the Commission considers that the alleged arrangement is unlikely to have the anti-competitive effect given that there are likely to be other healthcare clinics which are substitutable to [REDACTED] where the patients can obtain healthcare services in the market.

Should you wish to discuss the matter further, please contact us at complaints@compcomm.hk.

Thank you once again for contacting the Commission regarding your concern.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'C. Chan', written in a cursive style.

Christine Chan

Manager I (Operations)

Competition Commission