



競爭法律合規政策

凌駕性原則

香港零售管理協會（「本會」）及其會員將合力貫徹本會成立的合法目標。本會以及其會員須確保其並無以任何形式被用於促成反競爭協議或行為。本會的一切會議（不論屬正式或非正式）均須按照所有適用的競爭法律進行，且本會會員同意在任何時候均全面遵守有關法律。為持續追求最佳專業標準並且竭力遵守有關法例，本會董事會已同意採納書面訂立的本《競爭法律合規政策》（「本政策」），並可供全體會員隨時方便取閱。本會強制全體會員、董事及員工遵循本政策。

任何合規政策都無法全面涵蓋有可能發生的各項事宜。因此，本政策及下文所載的指引並非巨細無遺。然而，其目標在於持續確保本會的一切會議及議事程序以及本會會員之間的任何討論均全面遵守所有適用競爭法律、規例及規則，且本會的全體會員、員工及來賓均知悉若干類型的資訊交流及行為乃屬違法。

嚴格遵守本政策屬尤其重要。對本會會員及本會自身而言，就違反競爭法律作出的相關制裁可能十分嚴厲，當中包括大額罰款（包括潛在的個人罰款）及尋求補償的訴訟。全體會員均須同意，除了依循自身的競爭法律合規政策、培訓及法律意見（本政策概不取而代之）外，亦會依循本政策。

涵蓋範圍

競爭法律不僅適用於競爭對手之間的正式協議，亦適用於任何形式的非正式或口頭協議或並無宣之於口的共識。本政策適用於會員之間的一切聯繫，包括：

1. 會員之間屬正式或非正式、直接或間接的通訊；
2. 有關本會的特定委員會、計劃、會議或其他安排之內的通訊；及
3. 在本會的非正式會議、社交活動或於本會活動或會議周圍場地的通訊。



很多競爭法律（包括香港《競爭條例》）的實施範圍均包括域外。換言之，該等法律並非針對有關行為在何地發生或者有關協議或安排在何地訂立，而是針對其對競爭的影響在何地產生。

競爭合規指引

本會不得訂立任何目的或效果是妨礙、限制或扭曲在香港的競爭的協議、安排或會員之間的經協調做法。

可能違反香港《競爭條例》的協議、安排或經協調做法包括（但不限於）：

1. 直接或間接訂定價格或任何其他交易條件；
2. 限制或控制生產、市場、技術發展或投資；或
3. 分享市場或供應來源。

會員須確保他們及自身員工均不討論、傳達或交換任何商業敏感資料（例子請見下文“會員不可討論的事項”），或者互相達致任何旨在規管價格、營銷與廣告策略、成本與收入、研發計劃與投資、與第三方的交易條款與條件（包括採購策略、供應條款、交易計劃或分銷策略）的共識或協議。此不僅適用於在本會正式會議上的討論，亦適用於在本會會議舉行之前、期間及之後進行的非正式討論。

防止非法行為的一般指引

1. 切勿營造可能令人覺得存在不道德及非法行為或者若干類型的敏感商業或機密資料不當交換的環境。
2. 切勿討論或交換某公司一般不會向公眾披露的有關某公司的商業行為、市場地位或策略的資料，以及可能會使收取方獲得競爭優勢的任何具體或機密資料。請參閱下文“會員不可討論的事項”，以了解不得在正式會議或非正式社交場合上討論或交換的商業敏感資料的一些例子。



3. 切勿以任何方式，例如電話討論、傳真、函件、電郵或其他電子通訊形式（包括但不限於）文字訊息及透過社交媒體渠道進行的通訊，分享商業敏感資料。一旦提及任何商業敏感資料或事宜，必須即時終止對話。
4. 若對某討論的合法正當性有任何疑問，必須提出異議並要求停止討論，直至法律顧問能夠確認該主題屬適當為止。一切有關討論亦應匯報予法律顧問，以待進一步指示。
5. 切勿向第三方披露本會或本會任何會員的專有資料。
6. 切勿就任何主題或事宜進行任何「不記錄在案」討論。就競爭法律合規而言，凡屬不能公開討論及記錄在案的事情，均須自動被視為欠妥或越界處理。

會員不可討論的事項

會員不可舉行有關以下各項的正式或非正式討論或會議：

1. 個別公司或行業的價格，包括影響價格的任何事項，例如折扣、回扣、附加費、價格變動、價格差距、利潤率、價格加成、信貸或其他銷售條款；
2. 個別公司的成本，包括任何成本組成部分，例如生產或分銷成本、成本會計公式、計算成本的方法；
3. 有關個別供應商、客戶（例如銷售、投標、條款與條件）、地域或市場的事項，包括其效果可能是將供應商或客戶排除於市場之外的任何試圖集體行動；
4. 個別公司的銷售或生產相關資料，包括銷售量、銷售收入、產量、產能、產能利用率、存貨水平 / 庫存、物資或供應來源；及 / 或
5. 個別公司的機密未來計劃，包括有關銷售與營銷策略、生產、分銷、投資、設計或技術的未來計劃。

會員可以討論的事項

會員可以討論下列各項：

1. 有關行業的非機密、技術或法律事宜，例如行業標準及健康與安全事項、環境關注、與企業社會責任有關的事項；



2. 與目前或未來商業策略無關，或無法揭示目前或未來商業策略的過往資料，例如有關定價、個別客戶、交易資料或者任何其他商業資料；
3. 有助於廣告與營銷相關政策辯論的營銷整體資料；
4. 技術方面的整體事宜，例如行業及會員有關特定設備或技術的商業營運特徵以及相關適合性；及
5. 行業公關或游說活動。

基本指標及行業統計數字

會員可能會不時有意向本會提供數據，以便就引起共同興趣的事項編彙報告或者進行基本指標調查，例如有關數據可能涉及銷售、成本或生產水平。

會員應遵循下列有關的數據交換、報告或基本指標調查的規則：

1. 提交自身數據的參與者不得向其他參與者披露其個別資料；
2. 在必要時採取預防措施，以確保數據以總體形式發布，而並不明確識別某一特定參與者，且不能推斷數據適用於任何特定參與者；
3. 若進行基本指標調查，在必要時採取預防措施，以確保每間參與公司在提供予所有公司的報告內均以匿名方式排名，而每間公司將以保密方式獲個別告知其實際表現；
4. 本會將對個別公司的數據嚴格保密；及
5. 在本會會議或任何其他會議舉行期間或前後，會員均不得討論有關個別公司數據的事項。

如有需要，本會及參與會員將就有關的數據交換、報告或基本指標調查的設置及結構尋求法律意見。

本會的紀錄存置及內部程序

1. 本會將：
 - 於有關活動舉行之前傳閱會議議程或活動日程；



- (如有必要披露有關的商業敏感資料) 確保議程 / 日程或會議材料所載的任何商業敏感資料均以匿名或總體處理，以防遭到識別；及
- 傳閱會議紀錄，當中記載的參會者個人身分，以及在每次會議後於會議期間的討論。

本會會員將從速審閱議程 / 日程及會議紀錄，向本會秘書告知對議程 / 日程項目的異議 (如有)，並提供對會議紀錄的更正。

2. 本會會議的議程及紀錄中應加入一項書面陳述，當中應載有下文：

「本會不得作出任何使其自身或其會員可能觸犯任何適用的競爭法律的討論或行為。舉例而言：會員不得討論、傳達或交換任何商業敏感資料，包括有關價格、營銷與廣告策略、成本與收入，或其他交易條款、條件與策略的非公開資料。此規定不僅適用於在本會正式會議上的討論，亦適用於本會會議舉行之前、期間及之後進行的非正式討論。」

3. 在本會會議的議程應包括一點，當中規定須「重溫競爭合規政策」。根據該點，會議主席應作出一項口頭陳述，向參與者提醒本會的合規政策。

4. 主席口頭作出的合規政策陳述應記錄於會議紀錄中。

概不取代會員的法律意見

競爭法律屬複雜領域，合規情況將往往視乎個別會員的情況而定。本政策概不取代會員自行尋求法律意見。本會概不就個別會員遵守競爭法律而接受法律責任，且任何會員都不應就其個別的法律責任而依賴本政策的遵守。



Competition Law Compliance Policy

Overriding Principles

The Hong Kong Retail Management Association (the "Association") and its members will work together to pursue the lawful objectives for which the Association was established. The Association, together with its members, shall ensure that it is not used in any way to facilitate anti-competitive agreements or practices.

All meetings of the Association, whether formal or informal, shall be conducted in accordance with all applicable competition laws and the members of the Association agree that they will at all times fully comply with such laws. In an effort to permanently strive for the best professional standards and for compliance with the relevant legislation, the Board of directors of the Association has agreed to adopt this written Competition Law Compliance Policy (the "Policy") that can be easily accessed by all members at all times. This Policy is mandatory for all members, directors and staff of the Association.

A compliance policy cannot address every possible issue that may arise. Therefore, this Policy and the guidelines contained below are not exhaustive. However, the objective is to continue to ensure that all meetings and proceedings of the Association and any discussions between members of the Association are in full compliance with all applicable competition laws, regulations and rules and that all members, staff, and guests of the Association are aware that certain types of information exchanges and conduct are illegal.

Strict compliance with this Policy is especially important. The sanctions for breach of competition law can be very serious for members of the Association and the Association itself, including substantial fines (including potential personal penalties) and actions for compensation. All members must agree to abide by this Policy, in addition to their own competition law compliance policy, training and legal advice, for which this Policy is not a substitute.

Scope



Competition law applies not just to formal agreements, but any form of informal or oral agreement or unspoken understanding between competitors. This Policy applies to all contacts between members, including:

1. formal or informal, direct or indirect communications between members;
2. communications within a specific committee, programme, meeting or other arrangement relating to the Association; and
3. communications at informal meetings, social events or venues around an event or meeting of the Association.

Many competition laws (including the Hong Kong Competition Ordinance) operate extraterritorially. In other words, they look not at where the conduct took place or the agreement or arrangement was entered into, but at where it has an impact on competition.

Competition Compliance Guidelines

The Association shall not enter into any agreements, arrangements or concerted practices between members which have as their object or effect to prevent, restrict or distort the competition in Hong Kong.

Agreements, arrangements or concerted practices that may breach the Hong Kong Competition Ordinance include (but are not limited to) those that:

1. directly or indirectly fix prices or any other trading conditions;
2. limit or control production, markets, technical developments or investment; or
3. share markets or sources of supply.

Members must ensure that they and their staff do not discuss, communicate or exchange any commercially sensitive information (see "Matters which members will not discuss" below for examples), or reach any understandings or agreements with each other which aim to regulate prices,



marketing and advertising strategy, costs and revenues, R&D plans and investments, trading terms and conditions with third parties, including purchasing strategy, terms of supply, trade programs or distribution strategy. This applies not only to discussions in formal meetings of the Association, but also to informal discussions before, during and after meetings of the Association.

General guidelines to prevent unlawful practices

1. DO NOT create an environment which could create the impression of unethical and unlawful practices or inappropriate exchanges of certain types of sensitive commercial or confidential information.
2. DO NOT discuss or exchange information related to commercial behavior, market position or strategy of a company that a company would not normally disclose to the public, as well as any specific or confidential information that is likely to give receiving parties a competitive advantage. Please refer to "Matters which members will not discuss" below for some examples of commercially sensitive information that shall not be discussed or exchanged in formal meetings or informal social occasions.
3. DO NOT share commercially sensitive information by any means such as telephone discussion, faxes, letters, emails or other forms of electronic communications including (but not limited) text messages and communications through social media channels. DO terminate the conversation immediately if any commercially sensitive information or issues are raised.
4. DO object if you have any doubt as to the legitimacy of a discussion, and ask for the discussion to stop until the appropriateness of the topic can be confirmed with legal counsel. All such discussions should also be reported to legal counsel for further direction.
5. DO NOT disclose the Association or any its members' proprietary information to third parties.
6. DO NOT engage in any "off-the-record" discussions regarding any topic or issue. Anything that cannot be discussed openly and on the record must automatically be treated as problematic or off-limits for the purposes of competition law compliance.

Matters which members will not discuss



Members will NOT hold formal or informal discussions or meetings relating to:

1. individual company or industry prices, including any matters affecting price such as discounts, rebates, surcharges, price changes, price differentials, profit margins, price mark-ups, credit or other terms of sale;
2. individual company costs, including any cost components such as production or distribution costs, cost accounting formulas, methods of computing costs;
3. matters relating to individual suppliers, customers (e.g. sales, bids, terms and conditions), territories or markets including any attempted collective action that might have the effect of excluding suppliers or customers from the market;
4. individual company sales or production related information, including sales volumes, sales revenues, production volumes, production capacity, capacity utilisation, stock levels/inventory, supplies or sources of supply; and/or
5. individual company's confidential future plans, including future plans relating to sales and marketing strategy, production, distribution, investments, design or technology.



Matters which members may discuss

Members may discuss:

1. non-confidential, technical or legal issues relevant to the industry such as industry standards and health and safety matters, environmental concerns, matters related to corporate social responsibility;
2. historic information that bears no relation to or could not give an indication of current or future commercial strategy, such as information relating to pricing, individual customers, transactions or any other commercial information;
3. information on marketing in general, which contributes to the policy debate around advertising and marketing;
4. issues relating to technology in general such as the characteristics and suitability to the industry and members' business operations of particular equipment or technology; and
5. industry public relations or lobbying initiatives.

Benchmarking and industry statistics

From time to time, members may wish to provide data to the Association to compile reports on matters of common interest or undertake benchmarking exercises; for example data such as sales, costs or production levels.

Members should observe the following rules in relation to such data exchanges, reports or benchmarking exercises:

1. participants submitting their data must not disclose their individual information to other participants;
2. precautions will be taken, if necessary, to ensure the data is disseminated in an aggregated form which does not expressly identify a particular participant and does not permit data applicable to any particular participant to be deduced;
3. where benchmarking studies are undertaken, precautions will be taken, if necessary, to ensure each participating company is ranked anonymously in the report available to all



companies, while confidentially informing each company individually of its actual performance;

4. the Association will keep individual company data strictly confidential; and
5. members may not discuss matters relating to individual company data before, after or at a meeting or any other meeting of the Association.

Where necessary, the Association and participating members will take legal advice in relation to the setting up and structure of such data exchanges, reports or benchmarking exercises.

Record keeping and internal processes of the Association

1. The Association will:

- circulate meeting or event agendas prior to the relevant event;
- ensure that any commercially sensitive information contained in the agenda or meeting materials is anonymised or aggregated to prevent identification if disclosure of such commercially sensitive information is essential; and
- circulate minutes that records the identity of the individuals participating in the meeting and discussions during the meeting after each meeting.

Members of the Association will promptly review agendas and minutes and inform the Secretary of the Association if they object to agenda items and provide corrections to minutes of meetings.

2. A written statement should be included on agendas & minutes of meetings of the Association and should state the following:
3. "The Association shall not enter into any discussion or conduct that may infringe, on its part or on the part of its members, any applicable competition law. By way of example: members shall not discuss, communicate or exchange any commercially sensitive information, including non-public information relating to prices, marketing and advertising strategy, costs and revenues, or other trading terms, conditions and strategies. This applies not only to



discussions in formal meetings of the Association but also to informal discussions before, during and after meetings of the Association."

4. Agendas of meetings of the Association should include a point which stipulates "Review of competition compliance policy". Under this point, the chair of the meeting should make an oral statement reminding participants about the Association's compliance policy.
5. The chair's oral compliance policy statement should be recorded in the minutes of the meeting.

No substitute for members' legal advice

Competition law is a complex area and compliance will often depend on an individual member's circumstances. Compliance with this Policy is not a substitute for a member taking its own legal advice. The Association accepts no liability for the competition law compliance of an individual member and compliance with this Policy should not be relied upon by any member in relation to its individual liability.