

16 June 2022

For Immediate Release

Competition Commission takes air-conditioning works cartel case to Competition Tribunal

The Competition Commission (“Commission”) has today commenced proceedings in the Competition Tribunal (“Tribunal”) against two undertakings and three individuals, namely:

1. *ATAL Building Services Engineering Limited* and *Analogue Holdings Limited* (“Analogue”);
2. *Shun Hing Engineering Contracting Company Limited* and *Shun Hing Holdings Co., Ltd.* (“Shun Hing”);
3. *Mr. SER Ka Wai, Eric*, Senior Engineer of Analogue (“Mr. Ser”);
4. *Ms. CHENG Kit Shun*, Senior Engineer of Analogue (“Ms. Cheng”); and
5. *Mr. KWAN Siu Kin, Ken*, Senior Manager of Shun Hing (“Mr. Kwan”).

It is the Commission’s case that two competing providers of air-conditioning works, Analogue and Shun Hing, engaged in serious anti-competitive conduct in contravention of the First Conduct Rule of the Competition Ordinance (Cap. 619) whereby they fixed prices, shared markets and/or rigged bids in relation to the supply of air-conditioning works in Hong Kong from 14 December 2015 to 4 December 2019.

The Commission is seeking remedies before the Tribunal, including:

- Declarations that Analogue and Shun Hing have contravened the First Conduct Rule and that Mr. Ser, Ms. Cheng and Mr. Kwan are persons involved in the contravention;
- Orders for pecuniary penalties to be imposed on them;
- As against Analogue and Shun Hing, orders for the recovery of the Commission’s investigation costs;
- As against Analogue and Shun Hing, orders prohibiting them from engaging in any conduct that constitutes the contravention;
- As against Mr. Ser, Ms. Cheng and Mr. Kwan, orders prohibiting them from engaging in any conduct that constitutes involvement in the contravention;
- Orders requiring Analogue and Shun Hing to adopt an effective compliance programme; and
- As against all of the Respondents, orders for the recovery of the Commission’s costs of the proceedings.

The Commission has identified other potentially anti-competitive conduct in relation to air-conditioning works and may commence further proceedings in the Tribunal in the near future.

Mr. Rasul Butt, Chief Executive Officer of the Commission, said, “Today’s enforcement action exposes and tackles a multi-year cartel formed between two established companies in the provision of air-conditioning services in Hong Kong. With air-conditioning being a modern necessity, the

cartel affected many members of the public residing and working in residential and commercial buildings. The enforcement action today further demonstrates that disrupting hardcore cartels that affect people’s livelihood, especially when the companies involved are major players in the relevant market, will continue to be one of the Commission’s top priorities.”

“The case also highlights the need for parent companies to ensure all members of their group abide by the Competition Ordinance. This principle has been reiterated by the Court of Appeal’s judgment on pecuniary penalties in another case¹ recently, which affirmed that the Commission may, in addition to parties which directly participated in the contravention, bring action against any entity comprised in the same undertaking for the full unmitigated penalty.”

“Parent companies should be aware of their potential legal liabilities should their subsidiaries carry out anti-competitive activities, and actively take measures to ensure full compliance with the Ordinance within their corporate groups,” Mr Butt added.

The Commission also calls on businesses in all sectors to steer clear of anti-competitive practices, while those already involved in cartel conduct should approach the Commission for leniency or cooperation.

¹ See the Commission’s [press release](#) dated 2 June 2022.

Air-conditioning Cartel Case Summary

Initiation of the case



Commission received a complaint

Commission conducted an investigation and exercised its compulsory investigatory powers under the Competition Ordinance. Close to **a million documents** were reviewed.

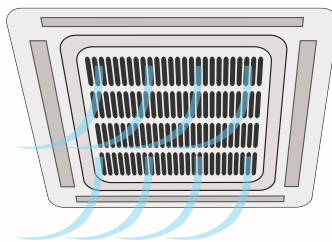


The Commission's Case

From **14 Dec 2015 to 4 Dec 2019**, two senior engineers at **Analogue^[1]** and a senior manager at **Shun Hing^[2]** engaged in frequent communications when responding to RFQs^[3] of air-conditioning projects in Hong Kong. In the communications they sought and agreed to provide cover bids, and shared commercially sensitive information.



The Commission believes that such conduct amounts to Serious Anticompetitive Conduct comprising price-fixing, market-sharing and/or bid-rigging, which potentially impacted their sales of air-conditioning works with an overall value of around **HK\$2 billion**.



Enforcement

Commission is seeking orders before the Competition Tribunal:

- Declaration of contravention of the First Conduct Rule
- Imposition of fines
- Recovery of the Commission's costs
- Prohibition on engaging in same conduct again
- Respondent undertakings to adopt an effective compliance program



Respondents:

- Analogue^[1]
- Shun Hing^[2]
- Two senior engineers at Analogue
- A senior manager at Shun Hing

[1] "Analogue" refers to ATAL Building Services Engineering Limited and its parent company Analogue Holdings Limited.

[2] "Shun Hing" refers to Shun Hing Engineering Contracting Company Limited and its parent company Shun Hing Holdings Co., Ltd.

[3] "RFQs" refers to requests for tender or quotation.

[4] "Pig Quotes" refers to the submission of cover bids in response to RFQs.

Questions and Answers

1. How was the case discovered?

The case was discovered as a result of a complaint received.

2. How did the cartel conduct take place?

According to the Commission's investigation, from December 2015 to December 2019, two senior engineers at Analogue and a senior manager at Shun Hing engaged in frequent communications including through emails and phone texting when responding to requests for tender or quotation (RFQs) from customers. In those communications they sought and agreed to provide cover bids (referred to as 'Pig Quotes'), shared information about their intentions to bid, and/or disclosed commercially sensitive information on their intended bidding price or other parameters of the bid such as the number of days required to complete the works that were tendered for.

The Commission has reasonable cause to believe that the above-mentioned conduct amounts to serious anti-competitive conduct in the form of price-fixing, market-sharing, and/or bid-rigging, in contravention of the First Conduct Rule of the Competition Ordinance.

3. What products or services were involved in the RFQs? How big was the scale of the infringement?

The Commission believes that Analogue and Shun Hing have engaged in continuous infringement over a period of more than four years, which potentially impacted their sales of a wide range of air-conditioning works such as the installation of central air-conditioners, replacement of components such as pipes and chillers, as well as their day-to-day maintenance with an overall value of around HK\$2 billion.

4. What is the harm and who are the victims of this cartel?

The suspected cartel reduced the choices and potentially increased the costs of air-conditioning works for the public sector, owners of commercial buildings and residential homes who had called for the RFQs.

5. Why are Analogue Holdings Limited and Shun Hing Holdings Co., Ltd also named as respondents in this case?

Analogue Holdings Limited and Shun Hing Holdings Co., Ltd are the parent companies of ATAL Building Services Engineering Limited and Shun Hing Engineering Contracting Company Limited respectively. It is the Commission's case that they form part of the same undertaking as their subsidiaries and are therefore also liable as primary contraveners of the First Conduct Rule.

The liability of parent companies as members of the same undertaking has been reiterated by the Court of Appeal's judgment on pecuniary penalties in another case¹ recently, which affirmed that

¹ See the Commission's [press release](#) dated 2 June 2022.

the Commission may, in addition to parties which directly participated in the contravention, bring action against any entity comprised in the same undertaking for the full unmitigated penalty.

The case today serves as a strong reminder that parent companies in corporate groups need to ensure compliance of the Ordinance by their subsidiaries, and to have appropriate compliance programmes or measures in place towards that end.

6. Why are two senior engineers of Analogue and a senior manager of Shun Hing named as respondents in the case, but not higher or top management of the two undertakings?

The two senior engineers at Analogue and the senior manager at Shun Hing are pursued for their involvement in the contravention of the Competition Ordinance. In particular, they were the ones who had engaged in frequent and continuous collusive communications with each other during the relevant period.

Under section 91 of the Ordinance, a person involved in a contravention of a competition rule is a person who 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.

7. How challenging was the investigation of this case?

During investigation, the Commission made use of a broad range of its compulsory powers under the Competition Ordinance, including obtaining documents and information, requiring people to attend before the Commission, and searching premises with warrants. The investigation team reviewed almost a million documents, making it one of the biggest cartel cases ever handled by the Commission in terms of the quantity of evidence.

8. What penalty and consequences would companies and individuals face if they are found to have contravened the Competition Ordinance?

Maximum penalties of a contravention of the Competition Ordinance for an undertaking include a pecuniary penalty of up to 10% of the undertaking's annual Hong Kong turnover per contravention for a maximum period of three years. The Tribunal may also issue orders requiring individuals to pay a pecuniary penalty or disqualifying them from serving as director of a company for a period of up to 5 years. Additionally, the Tribunal may issue orders requiring payment of damages to any person who has suffered loss or damage as a result of the contravention, or other orders to cease and remedy the contravention at issue.

2022 年 6 月 16 日

即時發布

競爭事務委員會就空調工程合謀案件 入稟競爭事務審裁處

競爭事務委員會（競委會）今天在競爭事務審裁處（審裁處），向兩間業務實體及三名人士展開法律程序。他們是：

1. 安樂機電設備工程有限公司及安樂工程集團有限公司（安樂）；
2. 信興機電工程有限公司及信興集團有限公司（信興）；
3. 安樂高級工程師余嘉偉先生（余先生）；
4. 安樂高級工程師鄭潔純女士（鄭女士）；及
5. 信興高級經理關兆堅先生（關先生）。

競委會公布的案情指出，安樂及信興兩間互為競爭對手的空調工程供應商，在 2015 年 12 月 14 日至 2019 年 12 月 4 日期間，在香港提供空調工程時合謀定價、瓜分市場及/或圍標。競委會認為，有關行為屬嚴重反競爭行為，違反《競爭條例》（第 619 章）的第一行為守則。

競委會現正向審裁處申請以下命令，包括：

- 宣布安樂及信興違反第一行為守則，以及宣布余先生、鄭女士及關先生牽涉入違反該守則；
- 向他們施加罰款；
- 向安樂及信興收取競委會的調查費用；
- 禁止安樂及信興日後從事違反該守則的相同行為；
- 禁止余先生、鄭女士及關先生日後從事牽涉入違反該守則的相同行為；
- 安樂及信興須推行有效的合規計劃；及
- 向所有答辯人收取競委會的訟費。

競委會已經知悉尚有其他涉及空調工程的潛在反競爭行為，短期內可能會展開進一步法律程序。

競委會行政總裁畢仲明先生表示：「今日的執法行動，成功揭露及打擊了本港兩間在空調工程界甚具規模的公司持續多年的合謀行為。空調供應是現代生活的必需品，有關合謀行為影響到不少住戶及在商業大廈工作的市民大眾。今日的執法行動亦進一步展示，打擊影響民生的合謀行為繼續是競委會的執法重點之一，尤其是當涉案公司乃該市場具規模和活躍的參與者。」

「本案亦提醒企業的母公司必須確保集團的所有成員遵守《競爭條例》。上訴庭最近就另一宗案件¹的罰款裁決，已重申這個原則，該裁決確認除了直接參與反競爭行為的各方，競委會亦可向與他們組成同一業務實體的其他公司或人士追究全額罰款。」

畢先生補充：「母公司必須清楚了解，如其附屬公司從事反競爭行為，它們本身有何潛在的法律責任，同時應積極採取措施，確保其集團全面遵守《條例》。」

競委會呼籲所有行業的企業均不應參與反競爭行為，而已牽涉入合謀行為的人士，則應盡快聯絡競委會申請寬待或提供合作。

¹ 見競委會於 2022 年 6 月 2 日發布的[新聞稿](#)。

空調工程合謀案 案情摘要

案件展開



競委會接獲投訴

競委會進行調查，並根據《競爭條例》行使調查權力，期間共審視近**一百萬份文件**。



競委會公布的案情

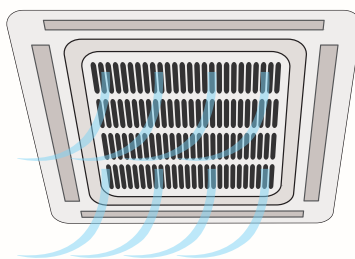
在**2015年12月14日至2019年12月4日**期間，**安樂^[1]**兩名高級工程師與**信興^[2]**一名高級經理，在回應香港空調工程項目的報價 / 招標邀請時頻密溝通。在該等溝通中，他們要求及同意提供掩護式標書，並分享敏感商業資料。

安樂



信興

競委會相信上述行為構成合謀定價、瓜分市場及 / 或圍標，屬嚴重反競爭行為，對它們所提供的空調工程服務構成潛在影響，涉及的工程銷售總額約**20億港元**。



執法

競委會向競爭事務審裁處申請以下命令：

- 宣布他們違反了「第一行為守則」
- 施加罰款
- 向他們收取競委會的費用
- 禁止他們日後從事相同行為
- 業務實體答辯人須推行有效的合規計劃



答辯人：

- 安樂^[1]
- 信興^[2]
- 安樂兩名高級工程師
- 信興一名高級經理

[1] 「安樂」指安樂機電設備工程有限公司及其母公司安樂工程集團有限公司。

[2] 「信興」指信興機電工程有限公司及其母公司信興集團有限公司。

[3] 「豬仔標」指在回應報價 / 招標邀請時提交掩護式標書。

常見問題

1. 本案是如何被發現的？

競委會在接獲投訴後發現本案。

2. 案中的業務實體如何進行合謀行為？

競委會的調查發現，安樂兩名高級工程師與信興一名高級經理，在 2015 年 12 月至 2019 年 12 月期間，在回應顧客的報價／招標邀請時，透過電郵及電話訊息等渠道頻密溝通。在該等溝通中，他們要求及同意提供掩護式標書（俗稱「豬仔標」）、分享本身投標意向的資料，及／或披露意向投標價或其他與投標有關的敏感商業資料，例如工程項目所需的完工日數。

競委會有合理理由相信上述行為構成合謀定價、瓜分市場及／或圍標，屬嚴重反競爭行為，違反《競爭條例》的第一行為守則。

3. 有關報價／招標邀請涉及哪些產品或服務？涉案的規模有多大？

競委會相信，安樂及信興持續從事違例行為超過四年，對它們所提供的各類空調工程服務，例如安裝中央空調系統、更換喉管及製冷系統等組件，以及系統的日常保養等，構成潛在影響，涉及的工程銷售總額約 20 億港元。

4. 這次合謀行為帶來甚麼影響？誰受到影響？

對於發出上述報價／招標邀請的公營界別、商業及住宅大廈的業主而言，該等懷疑合謀行為令他們的選擇減少，並可能增加他們需付的空調工程費用。

5. 為甚麼安樂工程集團有限公司及信興集團有限公司都被列為本案的答辯人？

安樂工程集團有限公司及信興集團有限公司分別是安樂機電設備工程有限公司及信興機電工程有限公司的母公司。競委會公布的案情指出，這兩間公司各自與其附屬公司為同一個業務實體的一部分，因此同被視為第一行為守則的主要違法者，須承擔法律責任。

事實上，上訴庭最近就另一宗案件¹的罰款裁決，已重申母公司作為同一業務實體的成員所需承擔的法律責任。該裁決確定，除了直接參與反競爭行為的各方，競委會亦可以向與它們組成同一業務實體的其他公司或人士追究全額罰款。

本案進一步提醒集團內的母公司必須確保附屬公司遵守《條例》，並應為此實施適當的合規計劃或措施。

¹ 見競委會於 2022 年 6 月 2 日發布的[新聞稿](#)。

6. 競委會為何將安樂兩名高級工程師及信興一名高級經理列為答辯人，而非該兩個業務實體更高級的管理層？

涉案的兩名高級工程師及高級經理，是因牽涉入違反《競爭條例》而被追究法律責任。他們在涉案期間，與對方頻密及持續地進行帶合謀性質的溝通。

根據《條例》第 91 條，牽涉入違反某競爭守則的人士，是指作出以下作為的人士：直接或間接以任何方式，明知而關涉違反該守則，或成為違反該守則的一分子，或與任何其他人士串謀違反該守則。

7. 調查本案期間，競委會遇到哪些挑戰？

調查期間，競委會運用了《競爭條例》所賦予的各種強制性權力，包括取得文件及資料、要求有關人士出席競委會聆訊，以及持法庭手令搜查處所。該案的調查隊伍在過程中共審閱近一百萬份文件，令這宗案件成為競委會有史以來處理證據數量最多的合謀案件之一。

8. 公司及個人一旦被裁定違反《競爭條例》，會有什麼罰則及後果？

違反《競爭條例》的業務實體可被競爭事務審裁處判處罰款，每項違例事項的罰款金額最高可達該業務實體在香港的年度營業額的 10%，最長可達 3 年。競爭事務審裁處亦可發出命令，判處個別人士支付罰款或取消其擔任公司董事的資格，最長為期 5 年。此外，競爭事務審裁處也可頒令，要求違例方對因其行為而蒙受損失或損害的人士作出賠償，或發出其他命令以終止或補救有關違例行為。