

Insights

HK COMPETITION COMMISSION'S FIRST PROSECUTION FOR FAILING TO ATTEND INTERVIEW

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SUMMARY

In May 2025, for the first time since the enactment of the Competition Ordinance (Cap 619) ("Ordinance"), the Hong Kong Competition Commission ("Commission") prosecuted a person for failing to attend an interview before the Commission^[1] in the recent investigation on the Aberdeen Wholesale Fish Market ("Fish Market").

COMMISSION'S POWER TO INVESTIGATE AND INTERVIEW

Under section 42 of the Ordinance, the Commission's investigatory powers include the power to require a person to attend before the Commission to answer questions relating to any matter the Commission reasonably believes to be relevant to an investigation.

Under section 52 of the Ordinance, it is an offence for a person to fail to attend such an interview requested by the Commission without reasonable excuse. The maximum penalty under this offence (on indictment) is a fine of HK\$200,000 and imprisonment for one year.

BACKGROUND OF THE FISH MARKET CASE

Since December 2022, the Commission has conducted an investigation codenamed "White Whale" to target alleged anti-competitive conduct, which included market sharing, output limitation and group boycott among wholesalers in the Fish Market. It was alleged by the Commission that such conduct was in contravention of the First Conduct Rule^[2] under the Ordinance.

Together with other Governmental departments, the Commission conducted various searches at several premises in the Fish Market and other relevant places.

CRIMINAL CASE BROUGHT

During its investigation, the Commission exercised its powers under section 42 of the Ordinance to require an individual under investigation to attend before the Commission's office. However, the individual failed to attend as required.

The Commission subsequently referred the case to the Police for criminal investigation, and the individual was charged before the Eastern Magistrates' Courts on 27 May 2025.

TAKEAWAY POINTS

This is not the first time the Commission has brought a criminal case against an individual for interfering with the Commission's investigatory powers under the Ordinance. In February 2025, in another investigation, a defendant was convicted of and sentenced to two months' imprisonment for disposing of and concealing documents during the Commission's execution of search warrants.

Companies and individuals under investigation by the Commission should be aware of the various investigatory powers vested in the Commission under the Ordinance. A failure to comply with a requirement or prohibition when the Commission exercises these investigatory powers can lead to a fine and/or even imprisonment.

[1] The Commission's press release dated 27 May 2025:

https://www.compcomm.hk/en/media/press/files/Failure_to_comply_PR_EN.pdf

[2] Under section 6(1) of the Ordinance, the First Conduct Rule prohibits businesses from making or giving effect to an agreement, engaging in a concerted practice, or making or giving effect to a decision of an association, if the object or effect is to harm competition in Hong Kong.

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