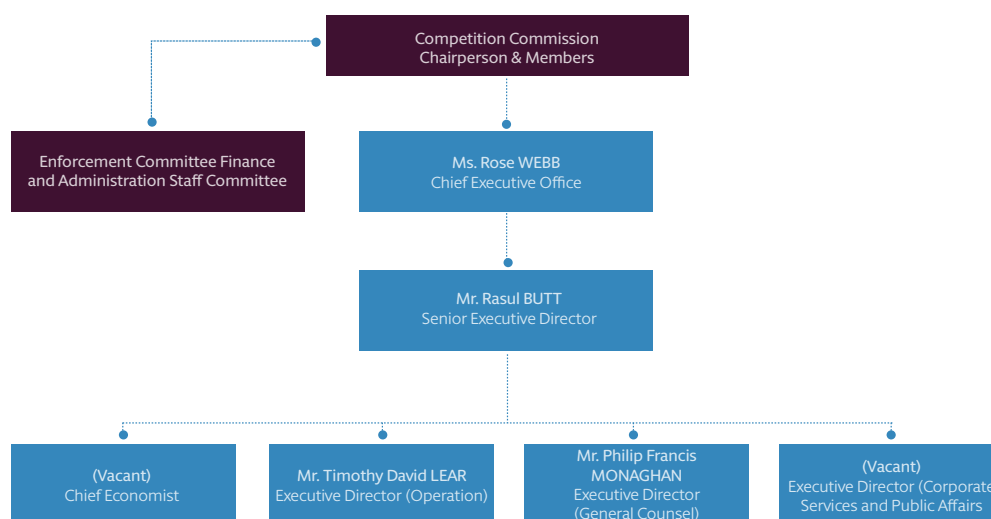


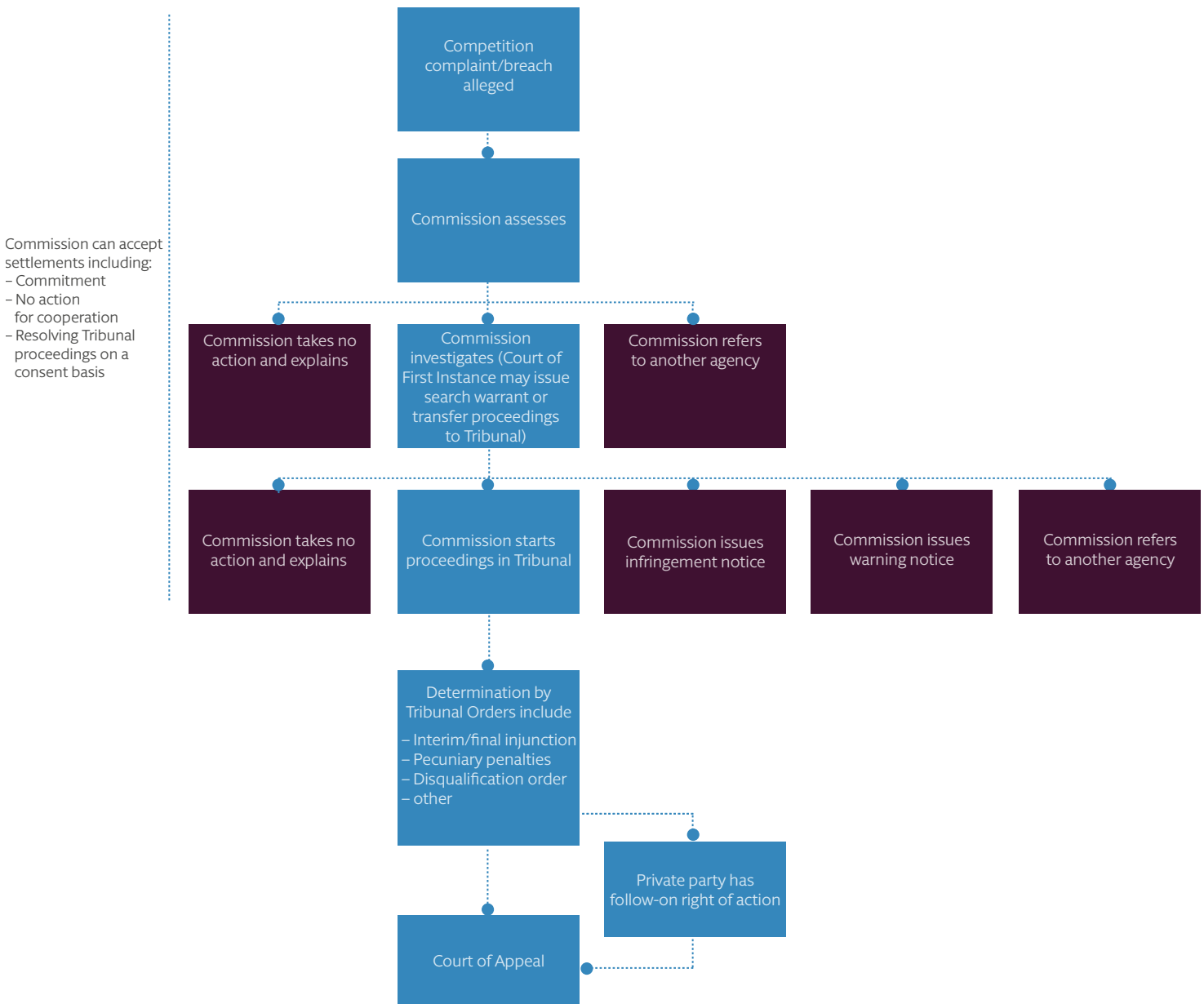
Commission investigations – what happens?

Who is the Hong Kong Competition Commission (the “Commission”)?



- **The Commission is an independent statutory body established to investigate, enforce and promote Hong Kong’s new competition laws** - It is committed to promoting a competitive environment that is conducive to free flow of trade, efficiency and innovation that brings more choices and better quality and prices of goods and services to consumers.
- **There are 15 Commission members (including the Chairperson, The Hon. Anna Wu) from a variety of backgrounds**, including competition, law, economics, corporate, banking and finance, merchant and trade, equal opportunity, travel and tourism, environmental, telecommunications, hospitality, property, small and medium enterprises, accounting and consumer protection. The Commission will also collaborate with other local regulators and overseas competition authorities to achieve effective enforcement.

How does the Commission assess and investigate complaints?



The Commission and the Courts

- The Commission has powers to assess and investigate breaches of Hong Kong's competition laws but does not have power to finally determine whether the laws (the Competition Ordinance) have been contravened. The Competition Tribunal ("Tribunal") and the domestic courts are responsible for establishing whether a contravention has occurred.

Complaints

- The Commission will consider any complaint it receives regarding anti-competitive behaviour, assess it and investigate it if it chooses. Complaints can be received from: the public, the Commission's

own research and market intelligence, other Commission investigations, referrals from other government agencies and other sources. Complaints can be made directly, anonymously and through an intermediary (such as a legal adviser) and in any form.

Guiding principles

- Commission investigations will be conducted in accordance with 6 core principles (1) professionally, (2) confidentially, (3) engaged, (4) timely, (5) proportionate resolutions, and (6) transparency.

FAQ: Commission assessment

Will the Commission investigate every complaint?

Not necessarily - the Commission acts in the public interest

- **The Commission has a discretion and is not required to investigate a complaint** if it does not consider it reasonable to do so. In particular, the Commission may choose not to investigate if the complaint is trivial, frivolous, misconceived or lacking in substance
- **The Commission may investigate a complaint even where the complainant no longer wishes to cooperate with the Commission**

What if the Commission decides to take no further action?

The Commission can later reconsider the issues raised in a complaint or query

- **Explanations will be provided** to the complainant if the Commission takes no action
- **The Commission may reconsider the issues raised** even if it initially decided to take no further action (usually where the additional evidence has been obtained, where a pattern of conduct arises warranting further consideration, or if the Commission has increased capacity to investigate the issue)

If the Commission is only assessing, what power does it have?

Powers are limited, any information it requires is sought on a voluntary basis

- **The Commission uses the initial assessment phase** to form a view on whether it has reasonable cause to suspect a contravention of the competition laws

FAQ: Commission investigation

- If the Commission commences an investigation, what powers does it have?

Powers are broad ranging:

- Commission will only commence an investigation where it has reasonable cause to suspect contravention of a Competition Rule.
- Commission has powers to issue notices requiring a person to provide documents, information or give evidence before the Commission and it can

seek a Court search warrant to enter and search specific premises

- Such persons with relevant evidence may include, current or former employees, competitors, customers, distributors, suppliers and trade association representatives
- Commission may request materials in any form such as draft documents, original documents, records in electronic form (and their metadata), correspondence and databases (including means of accessing the information in those databases), and may request written responses to the Commission's questions, lists of customers and suppliers, contact details of specified people, organisational diagrams and charts and other data

Key things I should do and not do during an investigation?

Similar do's and don'ts apply to dawn raids and documentary investigations. See our Dawn Raid survival guide on our website for more information. In particular you should:

- **Seek legal advice**, you should immediately contact your legal adviser and understand the defences of legal professional privilege (LPP)
- **Co-operate** and comply with the Commission's requests as advised by your lawyers. Among other factors, the Commission will take cooperation and compliance efforts into account in considering its proportionate enforcement response

What if I don't cooperate?

Penalties, include:

- **Monetary fines** of up to HK\$1,000,000, depending on the type of non-cooperation
- **Imprisonment** for individuals of up to 2 years, depending on the type of non-cooperation

Whistleblowing? Is there a leniency policy?

Yes there is a cartel leniency policy and hotline

- **In exchange for a cartel member's cooperation**, the Commission will agree not to commence proceedings for a pecuniary penalty against the first cartel member reporting the cartel conduct to the Commission that meets all the requirements under the policy.
- **Seek legal advice** before applying for leniency.

Contacts



Chris Dobby
Partner, Hong Kong
T +852 2840 5629
chris.dobby@hoganlovells.com



Henry Wheare
Counsel, Hong Kong
T +852 2840 5087
henry.wheare@hoganlovells.com



Danny Leung
Counsel, Hong Kong
T +852 2840 5079
danny.leung@hoganlovells.com



PJ Kaur
Associate, Hong Kong
T +852 2840 5634
pj.kaur@hoganlovells.com



Stephanie Tsui
Associate, Hong Kong
T +852 2840 5071
stephanie.tsui@hoganlovells.com

“

International firm with strong antitrust teams across the world.

Chambers Europe, 2016

”

“

Very thorough professional advice in explaining to us different strategies and the pros and cons of different action plans in our litigation.

*Chambers Greater China, 2016
(Dispute Resolution: Litigation)*

”



www.hoganlovells.com

“Hogan Lovells” or the “firm” is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word “partner” is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.

© Hogan Lovells 2017. All rights reserved. 11110_Ab_0117