

## 避免觸犯《競爭條例》

### Avoid contravening the Competition Ordinance

管局於2023年1月11日發出一封致持牌人函件，就早前有四間地產代理公司在短時間內發出內部指引，要求其持牌員工於一手物業銷售中須遵守公司收取淨佣金不少於2%的指示，而事件引起有關競爭的關注一事，提醒持牌人一些相關事宜。

就上述地產代理公司的行為，競爭事務委員會已於2023年1月6日發出新聞稿 ([www.compcomm.hk/tc/media/press/files/Property\\_PR\\_CH.pdf](http://www.compcomm.hk/tc/media/press/files/Property_PR_CH.pdf)) 作出回應。

持牌人應注意，地產代理公司不得訂立任何協議或經協調做法以達致妨礙、限制或扭曲競爭的目的或效果。地產代理公司應自行決定其所收取的佣金率、向其客戶所提供的折扣、回贈及優惠；又或與客戶個別協商，而非採用或跟從行業內的標準佣金率或以任何形式集體訂定的佣金率。否則，有可能違反《競爭條例》下的「第一行為守則」。

因此，持牌人應緊記，不可以向客戶表示行內設有任何「慣性」或「劃一」佣金率，或表示所有其他地產代理公司所收取的佣金率也是一樣的。

持牌人也應加以注意，「合謀定價」可以多種形式作出，包括競爭對手之間就價格元素（例如折扣、回贈、促銷或其他優惠）；又或就取消或減少折扣達成的協議或共識，均是一種反競爭行為並有可能違反《競爭條例》；而違反競爭守則可被罰款（最高為公司年度營業額的10%，最長三年），取消董事資格令及/或其他制裁。

The EAA issued a Letter to Licensees on 11 January 2023 drawing licensees' attention to certain reminders relating to the competition concerns arisen from internal memos issued by four estate agency companies, at more or less the same time, directing their licensed employees to observe a minimum net commission of 2% in first-hand property transactions.

In view of the aforesaid actions of the estate agencies, the Competition Commission issued a press statement ([www.compcomm.hk/en/media/press/files/Property\\_PR\\_EN.pdf](http://www.compcomm.hk/en/media/press/files/Property_PR_EN.pdf)) on 6 January 2023.

Licensees should note that estate agency companies must not enter into any agreement or engage in any concerted practices which have the object or effect of preventing, restricting or distorting competition. Estate agencies should instead make their own decisions as to the rate of commission to charge; or discounts, rebates and incentives to offer to their clients or negotiate individually with them, rather than adopting or following any so-called "standard" rate in the industry or a rate that is set collectively in any way. Failing which, they may contravene the First Conduct Rule of the Competition Ordinance.

Licensees should thus bear in mind that they should not tell their clients that there is a "customary" or "standardised" commission rate in the industry, or that all other estate agency companies would charge the same commission rate.

As a further word of caution, price fixing can take many forms. It includes agreement or consensus between competitors to fix elements of price such as discounts, rebates, promotions or other incentives; or to eliminate or reduce discounts, which is an anti-competitive practice that could contravene the Competition Ordinance; and a contravention

of the competition rule can result in pecuniary penalty (up to 10% of the company's turnover for a maximum of three years), director disqualification orders and/or other sanctions.

