

Time to co-operate? Covid-19 guidance on competitor collaboration

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We hope you are safe and well. These are unprecedented times and we understand the new pressures being put on businesses globally.

Following a wave of similar statements by overseas agencies, the Hong Kong Competition Commission has today published a statement on the Covid-19 outbreak available [here](#). The HKCC guidance applies to all sectors of the economy, recognising that businesses across Hong Kong may need to come together to better serve the pressing needs of consumers and essential service providers.

Whilst the competition rules still apply, [given the current exceptional circumstances, certain types of competitor coordination may be justified](#). Businesses in a wide number of sectors may legitimately need to take measures together to address public health and safety concerns arising from the current circumstances.

Where there are [clear consumer benefits and a demonstrable public interest](#) (e.g. avoiding shortage, ensuing fair distribution of scarce products, continuing an essential service, providing services to vulnerable groups), we see the [legitimacy of collective actions is clear](#).

1. Practical examples of cooperation necessitated by the Covid-19 outbreak

Any collective measures need to be temporary and subject to ongoing review as to their necessity. The HKCC has pointed to its existing guidance on joint buying, joint selling arrangements and information exchange.

The HKCC not referred to specific scenarios. However, based on overseas examples, we would hope the HKCC to understand the need for cooperation, such as:

- > the sharing of distribution/logistics networks,
- > pooling employees/costs of employees,
- > sharing data/information or other resources relating to capacity with a view to secure access to socially critical goods and services,
- > joint production / joint supply arrangements which are necessary to address concerns arising from Covid19 pandemic (e.g. to avoid a shortage, to ensure security of supply for an essential product at the current time).

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Agencies in the UK and Australia have given sector specific guidance to cooperation in financial services, retail/groceries and healthcare/medical equipment. These may also be a reliable source for permissible cooperation, and we can provide more details if of interest to you.

2. Facts Matter!

The specific circumstances of your proposed cooperation need to be considered carefully and we would encourage a cautious approach – to ensure you stay on the right side of the line.

There is no formal mechanism to get “clearance” from the HKCC – and self-assessment is expected to be the norm. However, the agency intends to take “a pragmatic approach in its enforcement and advisory functions”.

The HKCC has said it will be open to expedited **informal discussions** with companies or industry representatives – and commits to giving its **initial views within 5 working days**. Sufficient information would be needed to explain the proposed cooperation. The HKCC advises businesses to consider having those communications through a trade association – or through a legal advisor.

3. Measures unrelated to Covid-19 remain subject to normal scrutiny

The statement is clear that the current circumstances are not a “free-pass”. Cooperation that is unrelated to the consequences of Covid-19 does not benefit from the guidance. Any coordination measures that go beyond what is proportionate and necessary (e.g. longer-term arrangements) remains subject to the standard principles.

Do let us know if you’d like to discuss, and until then, stay safe.

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