

14 November 2023

For Immediate Release

Competition Commission takes estate agencies' price-fixing cartel case to Competition Tribunal

The Competition Commission (“Commission”) has today commenced proceedings in the Competition Tribunal (“Tribunal”) against one undertaking and five individuals, namely:

1. **Midland Realty International Limited** (“Midland Realty”), **Hong Kong Property Services (Agency) Limited** (“Hong Kong Property”) and **Midland Holdings Limited** (“Midland Holdings”) (collectively “Midland”);
2. **Ms. WONG Ching Yi Angela**, Deputy Chairman and Managing Director, an executive director and authorized representative of Midland Holdings (“Ms. Wong”);
3. **Mr. PO Siu Ming**, Chief Executive Officer – (Residential - Hong Kong & Macau) and Director of Midland Realty (“Mr. Po”);
4. **Mr. LEE Chung Yin**, Director – Hong Kong District of Midland Realty (“Mr. Lee”);
5. **Mr. CHEONG Tsz Chuen**, Chief Operation Officer – Kowloon and New Territories of Midland Realty (“Mr. Cheong”); and
6. **Mr. MA Tai Yeung**, Chief Executive Officer of Hong Kong Property (“Mr. Ma”).

It is the Commission’s case that, **between December 2022 and March 2023, real estate agency Midland and its competitors Centaline Property Agency Limited and Ricacorp Properties Limited (collectively “Centaline”) agreed to fix the minimum net commission rate¹ for the sale of first-hand residential properties in Hong Kong at 2%**, which effectively fixes or restricts the maximum level of rebate their frontline agents could offer to the purchasers of such properties. As rebate is an element that affects the price that a purchaser will ultimately pay for the relevant property, the Commission has reasonable cause to believe that such arrangements amount to serious anti-competitive conduct in the form of price fixing, and/or exchange of competitively sensitive information, in contravention of the First Conduct Rule of the Competition Ordinance.

Back in early January 2023, the Commission took note of media reports that four real estate agencies had issued internal memos in close timing with one another’s, directing their respective agents to observe a minimum net commission rate of 2% in first-hand residential property transactions starting from 1 January 2023. In response to these reports, the Commission issued a press statement² expressing its concern, and reached out to the relevant parties to ascertain the facts. **This eventually led to a formal investigation by the Commission when information gathered gave rise to reasonable cause** to suspect that a contravention of the Competition Ordinance has taken place, is taking place or is about to take place.

¹ Net commission rate means the commission paid by the property developers to the real estate agencies after deduction of all expenses including rebates to property buyers, set against the listed sale price of properties.

² See the Commission’s [press release](#) dated 6 January 2023.

In the course of the Commission's investigation, Centaline submitted a leniency application under the Commission's *Leniency Policy for Undertakings Engaged in Cartel Conduct (Leniency Policy)* to fully cooperate with the Commission in exchange for the Commission not to take any legal proceedings against Centaline and its officers or employees. A leniency agreement was subsequently entered into between Centaline and the Commission when the former satisfied all relevant requirements in the Leniency Policy which, inter alia, included providing substantial assistance to the Commission in its investigation.

The Commission is seeking remedies before the Tribunal, including:

- A declaration that Midland has contravened the First Conduct Rule, and each of Ms. Wong, Mr. Po, Mr. Lee, Mr. Cheong and Mr. Ma has been involved in the contravention;
- An order for pecuniary penalties to be imposed on them;
- Director disqualification orders against Ms. Wong, Mr. Po, Mr. Lee, Mr. Cheong and Mr. Ma;
- Orders for the payment of the Commission's costs of investigation and proceedings; and
- Orders requiring Midland to adopt an effective compliance programme as the Tribunal considers appropriate.

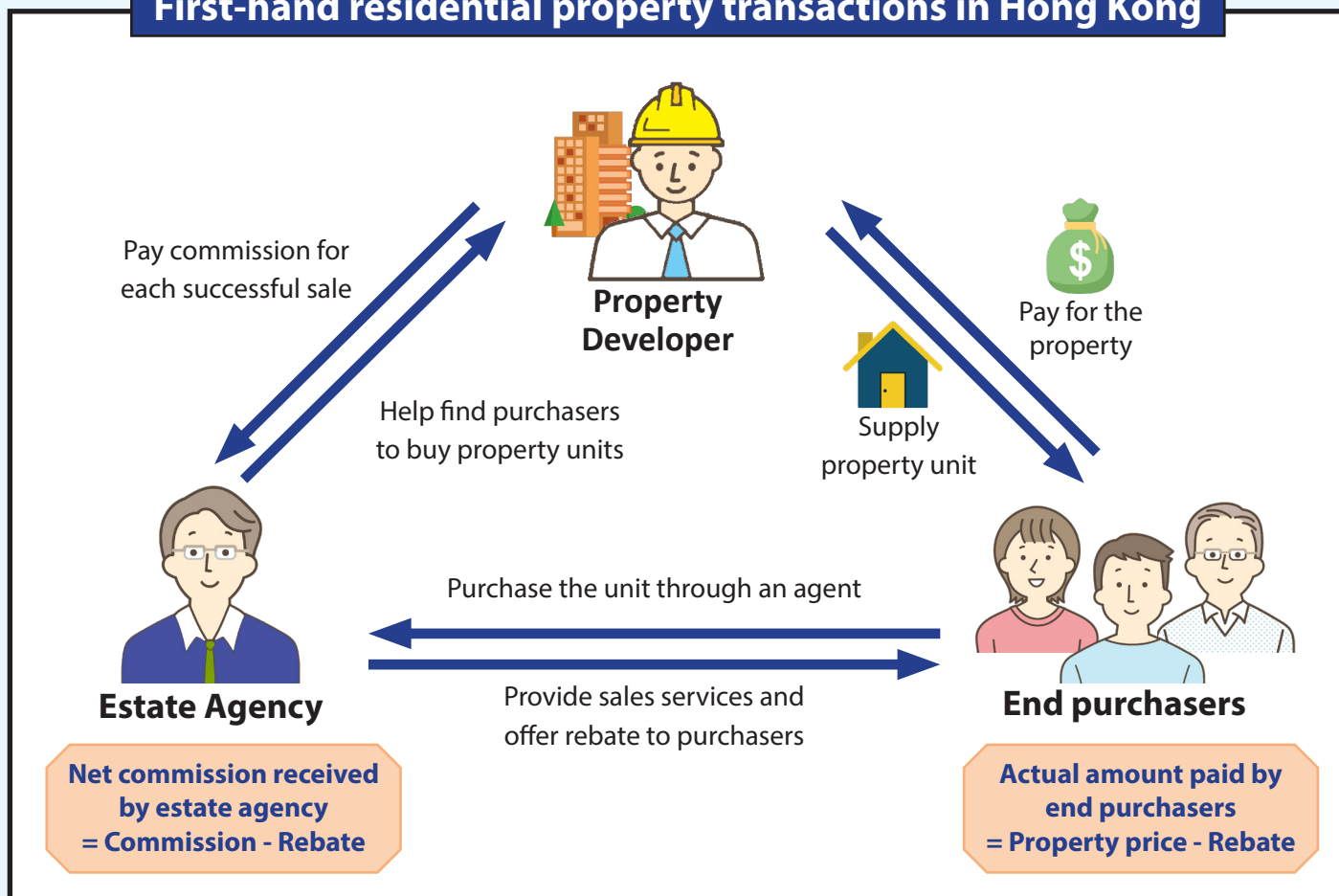
Mr. Rasul Butt, Chief Executive Officer of the Commission, said, "Home ownership is a much cherished dream for many families and individuals in Hong Kong, and it is by far the most significant financial commitment one can ever have. Intermediaries like real estate agencies have a vital role in facilitating the buying and selling of properties and by tackling a cartel formed between leading real estate agencies, the Commission aims to drive home the message that prices of residential properties, and any element that affects the prices that purchasers will ultimately pay for the properties, should be determined by market forces and be free from manipulation by industry players. This is no different from any transaction involving other goods and services and which are similarly subject to competition law. Through today's enforcement action, the Commission wishes to reiterate that it will spare no effort in disrupting hardcore cartels that affect people's livelihood, particularly in sectors such as the property market.

This case also highlights the significance and benefits of the Commission's *Leniency Policy* (for Undertakings / Individuals Involved in Cartel Conduct). The Policy strengthens enforcement and enhances deterrence by offering a strong, clear, and transparent incentive to cartel members to report and cease their anticompetitive conduct in exchange for the Commission's agreement not to commence proceedings against them in the Tribunal."

The Commission 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.

Case Summary

First-hand residential property transactions in Hong Kong



The Commission's Case

Estate agency **Midland** and its competitor **Centaline*** agreed to fix the **minimum net commission rate** for the sale of first-hand residential properties at 2%.



The agreement effectively **fixes or restricts the maximum level of rebate** the frontline agents could offer, affecting the amount that a purchaser will ultimately pay for the property.



The Commission believes that such arrangements amount to Serious Anti-competitive Conduct in the form of price fixing, and/or exchange of competitively sensitive information, in contravention of the First Conduct Rule of the Competition Ordinance.

*In the course of the Commission's investigation, Centaline submitted a leniency application. A leniency agreement was entered into between Centaline and the Commission when the former satisfied all relevant requirements.

Questions and Answers

1. How was the case discovered?

In early January 2023, the Commission noticed media reports that Midland Realty International Limited and Hong Kong Property Services (Agency) Limited (collectively “Midland”), as well as Centaline Property Agency Limited and Ricacorp Properties Limited (collectively “Centaline”) each issued internal memos in close timing from one another, directing their respective agents to observe a minimum net commission rate¹ of 2% in first-hand residential property transactions starting 1 January 2023. The Commission took the initiative to look into the matter.

2. What had Midland and Centaline done in this case?

According to the Commission’s investigation, senior management of Midland and Centaline met six times between October and December 2022 to discuss how to improve business environments and ways to reduce costs. At the sixth meetup in December 2022, they reached an agreement to fix the minimum net commission rate for the sale of first-hand residential properties in Hong Kong at 2%. In late December, Midland and Centaline each issued an internal memo in almost identical wording, directing their agents to observe the 2% rate starting 1 January 2023, unless director’s approval was obtained.

The Commission has reasonable cause to believe that such agreement amounts to serious anti-competitive conduct in the form of price-fixing, and/or exchange of competitively sensitive information, in contravention of the First Conduct Rule of the Ordinance.

3. How would the alleged anti-competitive conduct harm end purchasers of the properties?

Generally speaking, in Hong Kong, when a property developer has a first-hand residential property ready for sale, it will engage estate agencies to help find purchasers to buy the units. The property developer will pay a commission to the estate agencies for each successful sale, usually as a percentage of the price of the property. The commission percentage is decided or set by the developer.

Unlike the second-hand property market, end purchasers of first-hand residential property unit do not need to pay commission to the estate agencies. Frontline agents of the estate

¹ Net commission rate means the commission paid by property developers to the real estate agencies after deduction of all expenses including rebates to property buyers, set against the listed sale price of properties.

agencies compete by offering part of the commission received from the developer to end purchasers (known as rebates). As such, the actual amount that end purchasers need to pay for a first-hand residential property is the property price minus any rebate provided by the agent, and purchasers may engage the service of the agent providing the highest rebate.

The agreement between Midland and Centaline to fix the minimum net commission rate effectively fixes or restricts the maximum level of rebate their frontline agents could offer to the purchasers of such properties, which may result in home purchasers paying more than they would absent such an agreement.

4. The estate agencies involved did not fix the amount / rate of the rebate to end purchasers. Why would their conduct constitute price fixing?

On the basis that the commission paid by property developers to the estate agencies is solely determined by the property developers, in order to observe the minimum net commission rate of 2% per first-hand residential property transaction for the estate agency, the maximum level of rebate which a frontline agent could offer to an end purchaser would be fixed or restricted.

According to the First Conduct Rule of the Ordinance, price fixing is when competitors agree on pricing rather than compete against each other. Under the Ordinance, price refers to any price element in relation to the supply of products or services, including any discount or rebate. An agreement fixing rebate as a price element amounts to price fixing.

5. What is Leniency Policy? Who would be eligible to apply for leniency?

The Commission's Leniency Policy is designed to provide a strong and transparent incentive for undertakings and individuals who is engaged or involved in cartel conduct to stop their conduct and report the conduct to the Commission.

Under the current leniency framework, leniency is available for the first cartel member who:

Type 1. discloses its involvement in a cartel of which the Commission has not commenced an initial assessment or investigation, or

Type 2. provides substantial assistance to the Commission's investigation and subsequent

enforcement action of cartel conduct which the Commission is already assessing or investigating;

and goes on to meet all the requirements for receiving leniency.

The Commission will not commence proceedings before the Competition Tribunal against a successful leniency applicant (both Type 1 and Type 2) in relation to the conduct covered by the leniency agreement.

Under the Leniency Policy, leniency is not available to an undertaking or an individual that is the single ringleader of the cartel conduct or that have coerced other parties to engage in the cartel conduct.

6. What obligations does a successful leniency applicant need to fulfil under the leniency agreement reached with the Commission?

According to the Leniency Policy, a successful leniency applicant is required to fulfill a number of obligations under the leniency agreement including:

- (a) provide continuous cooperation to the Commission throughout the investigation and proceedings;
- (b) keep confidential all aspects of the leniency application and the leniency process; and
- (c) adopt a corporate compliance programme.

For Type 2 leniency applicants, in the event of follow-on action for damages being initiated in relation to the conduct covered by the leniency agreement, the Commission may issue an infringement notice to them, requiring them to admit liability for the contravention of the First Conduct Rule for the initiation of follow-on proceedings against them.